

THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1995 CUMULATIVE SUPPLEMENT

Volume 18

Chapters 130 through 136

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 457 S.E.2d 524. For complete scope of
annotations, see scope of volume page.

**Place Behind Supplement Tab in Binder Volume.
This Supersedes Previous Supplement, Which
May Be Retained for Reference Purposes.**

THE MICHIE COMPANY

Law Publishers

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1995

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Preface

This Cumulative Supplement to Volume 18 contains the general laws of a permanent nature enacted by the General Assembly through the 1995 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Preface

This Comprehensive Supplement to Volume 18 contains the general laws of a permanent nature enacted by the General Assembly through the 1905 Session, which are within the scope of each volume, and hence to this the general and subject indexes are appended. The general index is placed at the end of the volume, and the subject indexes are placed at the end of each volume. The general index is placed at the end of the volume, and the subject indexes are placed at the end of each volume.

Changes in the law since the last session are indicated by a star in the margin of the text. The general index is placed at the end of the volume, and the subject indexes are placed at the end of each volume.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1995 Regular Session affecting Chapters 130 through 136 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 340, p. 364.
North Carolina Court of Appeals Reports through Volume 118, p. 737.
South Eastern Reporter 2nd Series through Volume 457, p. 524.
Federal Reporter 3rd Series through Volume 53, p. 349.
Federal Supplement through Volume 882, p. 1100.
Federal Rules Decisions through Volume 160, p. 664.
Bankruptcy Reports through Volume 181, p. 677.
Supreme Court Reporter through Volume 115, p. 2020.
North Carolina Law Review through Volume 73, p. 1760.
Wake Forest Law Review through Volume 30, p. 426.
Campbell Law Review through Volume 17, p. 163.
Duke Law Journal through Volume 44, p. 1049.
North Carolina Central Law Journal through Volume 21, p. 178.
Opinions of the Attorney General.

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes a User's Guide has been included in Volume I. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes

Permanent portions of the General Laws enacted by the General Assembly through the 1987 Session Session affecting Chapters 130 through 135 of the General Statutes.

Annotations

Portions of the annotations to the General Statutes appearing in this volume are:

- North Carolina Reports through Volume 340, p. 364
- North Carolina Court of Appeals Reports through Volume 118, p. 107
- North Carolina Reports and Notes through Volume 467, p. 634
- Federal Reports and Notes through Volume 33, p. 346
- Federal Supplement through Volume 382, p. 1100
- Federal Rules Decisions through Volume 180, p. 664
- Bankruptcy Reports through Volume 181, p. 677
- Supreme Court Reports through Volume 115, p. 3030
- North Carolina Law Review through Volume 38, p. 1760
- White Paper Law Review through Volume 30, p. 136
- Carroll Law Review through Volume 17, p. 163
- Ohio Law Review through Volume 44, p. 1043
- North Carolina Central Law Journal through Volume 21, p. 175

Opinions of the Attorney General

The General Statutes of North Carolina 1995 Cumulative Supplement

VOLUME 18

Chapter 130A.

Editor's Note. — The legislation and annotations affecting Chapter 130A have been included in a recently published replacement chapter.

Chapter 131A.

Health Care Facilities Finance Act.

Sec.

131A-2. Legislative findings.

131A-21. Tax exemption.

§ 131A-2. Legislative findings.

It is hereby declared to be the policy of the State of North Carolina to promote the public health and welfare by providing means for financing, refinancing, acquiring, constructing, equipping and providing of health care facilities to serve the people of the State and to make accessible to them modern and efficient health care facilities.

The General Assembly hereby finds and declares that:

- (1) There is a need to overcome existing and anticipated physical and technical obsolescence of existing health care facilities and to provide additional modern and efficient health care facilities in the State; and
- (2) Unless measures are adopted to alleviate such need, the shortage of such facilities will become increasingly more urgent and serious; and
- (3) In order to meet such shortage and thereby promote the public health and welfare of the people of the State, it is necessary for the State to assist in the providing of adequate modern and efficient health care facilities in the State so that health and hospital care and services may be expanded, improved and fostered to the fullest extent practicable.

The General Assembly hereby further finds and declares that the financing, refinancing, acquiring, constructing, equipping and providing of health care facilities are public uses and public purposes and that enactment of this Chapter is necessary and proper for effectuating the purposes hereof. (1975, c. 766, s. 1; 1993, c. 553, s. 42.)

§ 131A-3. Definitions.

Cross References. — As to the definition of "Long-term care facility" in the Long-Term Care Ombudsman Program, see § 143B-181.16.

§ 131A-21. Tax exemption.

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State and will promote their health and welfare, and no tax or assessment shall be levied upon any health care facilities undertaken by the Commission prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the Commission in connection with such health care facilities.

Any bonds or notes issued by the Commission under the provisions of this Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise

taxes. The interest on the bonds and notes is not subject to taxation as income. (1975, c. 766, s. 1; 1995, c. 46, s. 12.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, and applicable to obligations issued on or after that date, in the second paragraph,

in the first sentence, deleted "their transfer and the income therefrom (including any profit made on the sale thereof)" following "Chapter" and added "income taxes on the gain from the transfer of the bonds and notes, and franchise taxes" to the end, and added the last sentence.

Chapter 131D.

Editor's Note. — The legislation and annotations affecting Chapter 131D have been included in a recently published replacement chapter.

Chapter 131E.

Health Care Facilities and Services.

Article 2.

Public Hospitals.

Part A. Municipal Hospitals.

Sec.

131E-7. General powers.

Part B. Hospital Authority.

131E-16. Definitions.

131E-23. Powers of the authority.

131E-28. Tax exemptions.

Article 5.

Hospital Licensure Act.

131E-76. Definitions.

Part F. Confidential Information.

131E-97.1. Confidentiality of personnel information.

131E-97.2. Confidentiality of credentialing information.

Article 6.

Health Care Facility Licensure Act.

Part A. Nursing Home Licensure Act.

131E-101. Definitions.

131E-104. Rules and enforcement.

131E-105. Inspections.

131E-106. Evaluation of residents in adult care homes.

Part B. Nursing Home Patients' Bill of Rights.

131E-115. Legislative intent.

131E-128. Nursing home advisory committees.

131E-129. Penalties.

Article 7.

Regulation of Ambulance Services.

131E-155.1. Ambulance Provider License required.

Article 8.

Cardiac Rehabilitation Certification Program.

Sec.

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131E-166. Definitions.

Article 9.

Certificate of Need.

131E-180.1. (See editor's note for expiration) Home health agency service restriction.

Article 9A.

Certificate of Public Advantage.

131E-192.2. Definitions.

131E-192.11. Fees for applications and periodic reports.

Article 11.

North Carolina Medical Database Commission.

131E-210 through 131E-213. [Repealed.]

Article 11A.

Medical Care Data.

131E-214. Title and purpose.

131E-214.1. Definitions.

131E-214.2. Data submission required.

131E-214.3. Patient data not public records.

131E-214.4. Statewide data processor.

Article 13.

Temporary Management of Long-Term Care Facilities.

131E-231. Definitions.

131E-242. Contingency fund.

Article 14.

Disposal of Surplus Property to Aid Other Countries.

131E-250. Disposition of surplus property by public and State hospitals.

ARTICLE 2.

Public Hospitals.

Part A. Municipal Hospitals.

§ 131E-7. General powers.

(a) A municipality shall have all the powers necessary or convenient to carry out the purposes of this Part, including the following powers, which are in addition to the powers granted elsewhere in this Part:

- (1) To construct, equip, operate, and maintain hospital facilities;
- (2) To levy property taxes pursuant to G.S. 153A-149 or G.S. 160A-209 and to allocate those and other revenues whose use is not otherwise restricted by law to fund hospital facilities; a hospital district may levy annually a tax on property having a situs in the district under the rules and according to the procedures prescribed in the Machinery Act, Chapter 105 of the General Statutes, Subchapter II, and a hospital district may allocate those and other revenues whose use is not otherwise restricted by law to fund hospital facilities;
- (3) To issue bonds and notes pursuant to the Local Government Finance Act, Chapter 159 of the General Statutes, for the financing of hospital facilities;
- (4) To use property owned or controlled by the municipality;
- (5) To acquire real or personal property, including existing hospital facilities, by purchase, grant, gift, devise, lease, condemnation, or otherwise;
- (6) To establish a fee schedule for services received from hospital facilities and to make services available regardless of ability to pay.

(b) A municipality or a public hospital may contract with or enter into any arrangement with other public hospitals or municipalities of this or other states, the State of North Carolina, federal, or public agencies, or with any person, private organization, or nonprofit corporation or association for the provision of health care. The municipality or public hospital may pay for or contribute its share of the cost of any such contract or arrangement from revenues available for these purposes, including revenues rising from the provision of health care.

(c) Any two or more municipalities may enter into agreements to jointly exercise the powers, privileges, and authorities granted by this Part. These agreements may provide for:

- (1) The appointment of a board, composed of representatives of the parties to the agreement, to supervise and manage a hospital facility;
- (2) The authority and duties of the board and the compensation of its members;
- (3) The proportional share of the costs of acquisition, construction, improvement, maintenance, or operation of hospital facilities;
- (4) The duration, amendment, and termination of the agreement and the disposition of property on termination of the agreement; and

(5) Any other matters as necessary.

(d) A municipality may lease any hospital facility, or part, to a nonprofit association on terms and conditions consistent with the purposes of this Part. The municipality will determine the length of the lease. No lease executed under this subsection shall be deemed to convey a freehold interest.

(e) A municipality shall not sell nor convey any rights of ownership the municipality has in any hospital facility, including the buildings, land and equipment associated with the hospital, to any corporation or other business entity operated for profit, except that nothing herein shall prohibit the sale of surplus buildings, surplus land or surplus equipment by a municipality to any corporation or other business entity operated for profit.

A municipality may lease any hospital facility, or part, to any corporation, foreign or domestic, authorized to do business in North Carolina on terms and conditions consistent with the purposes of this Part and with G.S. 160A-272. The municipality shall determine the length of the lease; however, no lease under this subsection shall be longer than 10 years, including options to renew or extend the original term of the lease, except that leases of surplus buildings, surplus land or surplus equipment may be for any length of time determined by the municipality. The lease shall provide that the hospital facility will be operated as a community general hospital open to the general public and that the lessee will accept Medicare and Medicaid patients. No lease executed under this subsection shall be deemed to convey a freehold interest. No bonds, notes nor other evidences of indebtedness shall be issued by a municipality to finance equipment for or the acquisition, extension, construction, reconstruction, improvement, enlargement, or betterment of any hospital facility when the facility is leased to a corporation, foreign or domestic, authorized to do business in North Carolina.

For purposes of this subsection, "surplus" means any building, land or equipment which is not required for use in the delivery of necessary health care services by a hospital facility at the time of the sale, conveyance of ownership rights, or lease.

This subsection shall not be construed to affect any pending litigation nor to reflect any legislative intent as to any prior authorized or executed agreements. This subsection shall be effective from January 1, 1984 until June 30, 1984.

(f) In addition to the general and special powers conferred by this Part, a municipality is authorized to exercise powers necessary to implement the powers under this Part. (1983, c. 775, s. 1; 1993, c. 529, s. 5.3; 1995, c. 509, s. 71.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, sub-

stituted a period for a semicolon at the end of subdivision (a)(6).

§ 131E-8. Sale of hospital facilities to nonprofit corporations.

Cross References. — For section regarding lease or sale of hospital facilities to for-profit corporations by municipalities and hospital authorities, see

§ 131E-13. For section regarding the lease or sale of hospital facilities to nonprofit corporations, see § 131E-14.

§ 131E-9. Governing authority of hospital facilities.

Local Modification. — Johnston Memorial Hospital: 1995, c. 221, s. 1.

§ 131E-13. Lease or sale of hospital facilities to for-profit corporations by municipalities and hospital authorities.

Cross References. — For section regarding sale of hospital facilities to non-profit corporations, see § 131E-8.

§ 131E-14. Lease or sale of hospital facilities to certain nonprofit corporations.

Cross References. — For section regarding sale of hospital facilities to non-profit corporations, see § 131E-8.

Part B. Hospital Authority.

§ 131E-16. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Board of county commissioners" means the legislative body charged with governing the county.
- (2) "Bonds" means any bonds or notes issued by the hospital authority pursuant to this Part and the Local Government Finance Act, Chapter 159 of the General Statutes.
- (3) "City" means any city or town which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.
- (4) "City clerk" and "mayor" means the clerk and mayor, respectively, of the city, or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.
- (5) "City council" means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city or town.
- (6) "Commissioner" means one of the members of a hospital authority appointed in accordance with the provisions of this Part.
- (7) "Community general hospital" means a short-term nonfederal hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions, both surgical and nonsurgical, such services being available for use primarily by residents of the community in which it is located.
- (8) "Contract" means any agreement of a hospital authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.

- (9) "Corporation, foreign or domestic, authorized to do business in North Carolina" means a corporation for profit or having a capital stock which is created and organized under Chapter 55 of the General Statutes or any other general or special act of this State, or a foreign corporation which has procured a certificate of authority to transact business in this State pursuant to Article 10 of Chapter 55 of the General Statutes.
- (10) "County" means the county which is, or is about to be, included in the territorial boundaries of a hospital authority when created hereunder.
- (11) "County clerk" and "chairman of the board of county commissioners" means the clerk and chairman, respectively, of the county or the officers thereof charged with the duties customarily imposed on the clerk and chairman, respectively.
- (12) "Federal government" means the United States of America, or any agency, instrumentality, corporate or otherwise, of the United States of America.
- (13) "Government" means the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.
- (14) "Hospital authority" means a public body and a body corporate and politic organized under the provisions of this Part.
- (15) "Hospital facilities" means any one or more buildings, structures, additions, extensions, improvements or other facilities, whether or not located on the same site or sites, machinery, equipment, furnishings or other real or personal property suitable for health care or medical care; and includes, without limitation, general hospitals; chronic disease, maternity, mental, tuberculosis and other specialized hospitals; nursing homes, including skilled nursing facilities and intermediate care facilities; adult care homes for the aged and disabled; public health center facilities; housing or quarters for local public health departments; facilities for intensive care and self-care; clinics and outpatient facilities; clinical, pathological and other laboratories; health care research facilities; laundries; residences and training facilities for nurses, interns, physicians and other staff members; food preparation and food service facilities; administrative buildings, central service and other administrative facilities; communication, computer and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space; X ray, laser, radiotherapy and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and such other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping and physical amenities.
- (16) "Municipality" means any county, city, town or incorporated village, other than a city as defined above, which is

located within or partially within the territorial boundaries of an authority.

- (17) "Real property" means lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.
- (18) "State" means the State of North Carolina. (1943, c. 780, s. 3; 1971, c. 780, s. 22; c. 799; 1983, c. 775, s. 1; 1995, c. 535, s. 19.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective

date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care homes" for "domiciliary homes" in subdivision (15).

§ 131E-23. Powers of the authority.

(a) An authority shall have all powers necessary or convenient to carry out the purposes of this Part, including the following powers, which are in addition to those powers granted elsewhere in this Part:

- (1) To investigate hospital, medical, and health conditions and the means of improving those conditions;
- (2) To determine where inadequate hospital and medical facilities exist;
- (3) To accept donations or money, personal property, or real estate for the benefit of the authority and to take title to the same from any person, firm, corporation or society;
- (4) To acquire by purchase, gift, devise, lease, condemnation, or otherwise any existing hospital facilities;
- (5) To purchase, lease, obtain options upon, or otherwise acquire any real or personal property or any interest therein from any person, firm, corporation, city, county, or government;
- (6) To sell, exchange, transfer, assign, or pledge any real or personal property or any interest therein to any person, firm, corporation, city, county or government;
- (7) To own, hold, clear and improve property;
- (8) To borrow money upon its bonds, notes, debentures, or evidences of indebtedness, as provided for in G.S. 131E-26 and G.S. 131E-27;
- (9) To purchase real or personal property pursuant to G.S. 131E-32;
- (10) To appoint an administrator of a hospital facility and necessary assistants, and any and all other employees necessary or advisable, to fix their compensation, to adopt necessary rules governing their employment, and to remove employees;
- (11) To delegate to its agents or employees any powers or duties as it may deem appropriate;
- (12) To employ its own counsel and legal staff;
- (13) To adopt, amend and repeal bylaws for the conduct of its business;

- (14) To enter into contracts for necessary supplies, equipment, or services for the operation of its business;
- (15) To appoint committees or subcommittees as it shall deem advisable, to fix their duties and responsibilities, and to do all things necessary in connection with the construction, repair, reconstruction, management, supervision, control and operation of the authority's business;
- (16) To establish procedures for health care providers to secure the privilege of practicing within any hospital operated by the authority pursuant to Part B of Article 5 of this Chapter;
- (17) To establish reasonable rules governing the conduct of health care providers while on duty in any hospital operated by the facility pursuant to Part B of Article 5 of this Chapter;
- (18) To provide for the construction, reconstruction, improvement, alteration or repair of any hospital facility, or any part of a facility;
- (19) To enter into any contracts or other arrangements with any municipality, other public agency of this or any other State or of the United States, or with any individual, private organization, or nonprofit association for the provision of hospital, clinical, or similar services;
- (20) Subject to subsection (c), to lease any hospital facilities to or from any municipality, other public agency of this or any other state or of the United States, or to any individual, corporation, or association upon any terms and subject to any conditions as may carry out the purposes of this Part. Subject to subsection (c), the authority may provide for the lessee to use, operate, manage and control the hospital facilities, and to exercise designated powers, in the same manner as the authority itself might do;
- (21) To act as an agent for the federal, State or local government in connection with the acquisition, construction, operation or management of a hospital facility, or any part thereof;
- (22) To arrange with the State, its subdivisions and agencies, and any county or city, to the extent it is within the scope of their respective functions,
 - (a) To cause the services customarily provided by each to be rendered for the benefit of the hospital authority,
 - (b) To furnish, plan, replan, install, open or close streets, roads, alleys, sidewalks or similar facilities and to acquire property, options or property rights for the furnishing of property or services for a hospital facility, and
 - (c) To provide and maintain parks and sewage, water and other facilities for hospital facilities and to lease and rent any of the dwellings or other accommodations or any of the lands, buildings, structures or facilities embraced in any hospital facility and to establish and revise the rents and charges;
- (23) To insure the property or the operations of the authority against risks as the authority may deem advisable;
- (24) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in

property or securities in which trustees, guardians, executors, administrators, and others acting in a fiduciary capacity may legally invest funds under their control;

- (25) To sue and be sued;
- (26) To have a seal and to alter it at pleasure;
- (27) To have perpetual succession;
- (28) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;
- (29) To remove vehicles parked on land owned or leased by the hospital authority in areas clearly designated as no parking or restricted parking zones. An owner of a removed vehicle as a condition of regaining possession of the vehicle, shall reimburse the hospital authority for all reasonable costs, not to exceed fifty dollars (\$50.00), incidental to the removal and storage of the vehicle provided that the designation of the area as a no parking or restricted parking zone clearly indicates that the owner may be subject to these costs;
- (30) To plan and operate hospital facilities;
- (31) To provide teaching and instruction programs and schools for medical students, interns, physicians, nurses, technicians and other health care professionals;
- (32) To provide and maintain continuous resident physician and intern medical services;
- (33) To adopt, amend and repeal rules and regulations governing the admission of patients and the care, conduct, and treatment of patients;
- (34) To establish a fee schedule for services received from hospital facilities and make the services available regardless of ability to pay;
- (35) To maintain and operate isolation wards for the care and treatment of mental, contagious, or other similar diseases;
- (36) To sell a hospital facility pursuant to G.S. 131E-8 or G.S. 131E-13; and
- (37) To agree to limitations upon the exercise of any powers conferred upon the hospital authority by this Part in connection with any loan by a government.

(b) A hospital authority may exercise any or all of the powers conferred upon it by this Part, either generally or with respect to any specific hospital facility or facilities, through or by designated agents, including any corporation or corporations which are or shall be formed under the laws of this State.

(c) Repealed by Session Laws 1983, c. 775, s. 1, effective June 30, 1984.

(d) No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to a hospital authority unless otherwise specified by the General Assembly. (1913, c. 42, s. 15; 1917, c. 268; C.S., s. 7273; 1983, c. 775, s. 1; 1995, c. 509, s. 135.1(l).)

Editor's Note. — Subsection (c), which expired effective June 30, 1984, allowed a hospital authority to only sell surplus land, buildings or equipment for profit and allowed a hospital authority to lease any hospital facility or part to a

corporation authorized to do business in North Carolina.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, inserted "or G.S. 131E-13" in subdivision (a)(36).

§ 131E-28. Tax exemptions.

(a) Hospital authorities shall be exempt from the payment of taxes or fees to the State or any of its subdivisions, or to any officer or employee of the State or any of its subdivisions.

(b) Hospital authority property used for public purposes shall be exempt from all local and municipal taxes and for the purposes of this tax exemption, an authority shall be deemed to be a municipal corporation.

(c) Bonds, notes, debentures, or other evidences of indebtedness of a hospital authority issued under the Local Government Revenue Bond Act, Chapter 159 of the General Statutes, Article 5, or issued pursuant to the bond and revenue anticipation provisions of Chapter 159 of the General Statutes, Article 9, or issued pursuant to G.S. 131E-26(b) or contracted pursuant to G.S. 131E-32 shall at all times be free from taxation by the State or any of its subdivisions, except for inheritance or gift taxes, income taxes on the gain from the transfer of the instruments, and franchise taxes. The interest on the instruments is not subject to taxation as income. (1943, c. 780, s. 21; 1971, c. 799; 1973, c. 695, s. 6; 1977, c. 268; 1983, c. 775, s. 1; 1995, c. 46, s. 13.)

Editor's Note. — Session Laws 1995, c. 46, s. 21 provides that the act is effective July 1, 1995, and applies to obligations issued on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995 and applicable to obligations issued on or after that date, in subsection (c), in the

first sentence, deleted “and the transfer of and income from such instruments, including any profits on sales” following “G.S. 131E-32” and added “income taxes on the gain from the transfer of the instruments, and franchise taxes” to the end, and added the last sentence.

ARTICLE 5.

Hospital Licensure Act.

§ 131E-76. Definitions.

As used in this article, unless otherwise specified:

- (1) “Commission” means the North Carolina Medical Care Commission.
- (2) “Governing body” means the Board of Trustees, Board of Directors, partnership, corporation, association, person or group of persons who maintain and control the hospital. The governing body may or may not be the owner of the properties in which the hospital services are provided.
- (3) “Hospital” means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes

licensed under G.S. 131E-102, and adult care homes licensed under G.S. 131D-2.

- (4) "Infirmity" means a unit of a school, or similar educational institution, which has the primary purpose to provide limited short-term health and nursing services to its students.
- (5) "Medical review committee" means a committee of a State or local professional society, of a medical staff of a licensed hospital or a committee of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of, or necessity for hospitalization or health care, including medical staff credentialing.
- (6) "Primary care hospital" means a hospital which has been designated as a primary care hospital by the North Carolina Department of Human Resources, Office of Rural Health and Resource Development. To be designated as a primary care hospital under this subdivision, the hospital must be located in a rural community, provide primary care inpatient services that do not include inpatient surgery, and provide outpatient services which may include outpatient surgery. A primary care hospital shall have a maximum annual average daily census of 15 patients and may have psychiatric and long-term care distinct part units. A primary care hospital must be part of a rural hospital network.
- (7) "Rural hospital network" means an alliance of members that shall include at least one primary care hospital and one other hospital. To qualify as a rural hospital network, the members must submit a comprehensive, written memorandum of understanding to the Department of Human Resources for the Department's approval. The memorandum of understanding must include provisions for patient referral and transfer, a plan for network-wide emergency services, and a plan for sharing patient information and services between hospital members including medical staff credentialing, risk management, quality assurance, and peer review. (1947, c. 933, s. 6; 1949, c. 920, s. 1; 1955, c. 369; 1961, c. 51, s. 1; 1973, c. 476, s. 152; 1983, c. 775, s. 1; 1985, c. 589, s. 41; 1993, c. 321, s. 245; 1995, c. 535, s. 20.)

Editor's Note. —

Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care

homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care homes" for "domiciliary homes" in subdivision (3).

Part F. Confidential Information.

§ 131E-97.1. Confidentiality of personnel information.

(a) Except as provided in subsection (b) of this section, the personnel files of employees or former employees, and the files of applicants for employment maintained by a public hospital as

defined in G.S. 159-39 or maintained by a hospital that has been sold or conveyed pursuant to G.S. 131E-8 are not public records as defined by Chapter 132 of the General Statutes.

(b) The following information with respect to each employee of a public hospital, as defined by G.S. 159-39, is a matter of public record: name; age; date of original employment or appointment; beginning and ending dates, position title, position descriptions, and total compensation of current and former positions; and date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification. In addition, the following information with respect to each licensed medical provider employed by or having privileges to practice in a public hospital shall be a matter of public record: educational history and qualifications, date and jurisdiction or original and current licensure; and information relating to medical board certifications or other qualifications of medical specialists.

(c) Information regarding the qualifications, competence, performance, character, fitness, or conditions of appointment of an independent contractor who provides health care services under a contract with a public hospital as defined in G.S. 159-39, or with a hospital which has been sold or conveyed pursuant to G.S. 131E-8, is not a public record as defined by Chapter 132 of the General Statutes. Information regarding a hearing or investigation of a complaint, charge, or grievance by or against an independent contractor who provides health care services under a contract with a public hospital as defined in G.S. 159-39 or with a hospital which has been sold or conveyed pursuant to G.S. 131E-8, is not a public record as defined by Chapter 132 of the General Statutes. Final action making an appointment or discharge or removal by a public hospital having final authority for the appointment or discharge or removal shall be taken in an open meeting, unless otherwise exempted by law. The following information with respect to each independent contractor of health care services of a public hospital, as defined by G.S. 159-39, is a matter of public record: name; age; date of original contract; beginning and ending dates; position title; position descriptions; and total compensation of current and former positions; and the date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification. (1993 (Reg. Sess., 1994), c. 570, s. 10; 1995, c. 99, s. 1; c. 509, s. 135.2(q).)

Effect of Amendments. — Session Laws 1995, c. 99, s. 1, effective May 23, 1995, added subsection (c).

Session Laws 1995, c. 509, s. 135.2(q),

effective July 29, 1995, inserted “or maintained by a hospital that has been sold or conveyed pursuant to G.S. 131E-8” in subsection (a).

§ 131E-97.2. Confidentiality of credentialing information.

Information acquired by a public hospital, as defined in G.S. 159-39, a hospital that has been sold or conveyed pursuant to G.S. 131E-8, a State-owned or State-operated hospital, or by persons acting for or on behalf of a hospital, in connection with the credentialing and peer review of persons having or applying for privileges to practice in the hospital is confidential and is not a public record under Chapter 132 of the General Statutes; provided

that information otherwise available to the public shall not become confidential merely because it was acquired by the hospital or by persons acting for or on behalf of the hospital. (1993 (Reg. Sess., 1994), c. 570, s. 10; 1995, c. 509, s. 135.2(r).)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted “a hospital that has been sold or

conveyed pursuant to G.S. 131E-8” for “or by” following “G.S. 159-39”.

ARTICLE 6.

Health Care Facility Licensure Act.

Part A. Nursing Home Licensure Act.

§ 131E-101. Definitions.

As used in this Part, unless otherwise specified:

- (1) “Adult care home”, as distinguished from a nursing home, means a facility operated as a part of a nursing home and which provides residential care for aged or disabled persons whose principal need is a home with the shelter or personal care their age or disability requires. Medical care in an adult care home is usually occasional or incidental, such as may be required in the home of any individual or family, but the administration of medication is supervised. Continuing planned medical and nursing care to meet the resident's needs may be provided under the direct supervision of a physician, nurse, or home health agency. Adult care homes are to be distinguished from nursing homes subject to licensure under this Part.
- (1a) “Combination home” means a nursing home offering one or more levels of care, including any combination of skilled nursing, intermediate care, and adult care home.
- (2) “Commission” means the North Carolina Medical Care Commission.
- (3) “Community advisory committee” means a nursing home advisory committee established for the statutory purpose of working to carry out the intent of the Nursing Home Patients’ Bill of Rights (Chapter 131E, Article 6, Part B) in accordance with G.S. 143B-181.1.
- (4) Repealed by Session Laws 1995, c. 535, s. 21, effective October 1, 1995.
- (5) “Medical review committee” means a committee of a State or local professional society, of a medical staff of a licensed hospital, of physicians having privileges within the nursing home or of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of or necessity for health care services under applicable federal statutes.
- (6) “Nursing home” means a facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A “nursing home” is a home for chronic or convalescent

patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A 'nursing home' provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

- (7) "Peer review committee" means any committee appointed in accordance with G.S. 131E-108, "Peer review." (1961, c. 51, s. 3; 1981, c. 833; 1983, c. 775, s. 1; 1995, c. 535, s. 21.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Subdivisions (1) and (1a) were redesignated at the direction of the Revisor of Statutes, the original designations having been (4) and (1).

Effect of Amendments. — The 1995 amendment, effective October 1, 1995,

substituted "adult care home" for "domiciliary home" in subdivisions (1) and (4); in subdivision (4), in the first sentence substituted "shelter" for "sheltered", in the second sentence, substituted "an adult care home" for "a domiciliary home", in the fourth sentence substituted "adult care homes" for "domiciliary homes", and deleted the last sentence which read "The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults."

§ 131E-104. Rules and enforcement.

(a) The Commission is authorized to adopt, amend, and repeal all rules necessary for the implementation of this Part.

(b) The Commission shall adopt rules for the operation of the adult care portion of a combination home that are equal to the rules adopted by the Social Services Commission for the operation of freestanding adult care homes. The adult care portion of a combination home in existence on January 1, 1982, shall be exempt from physical plant minimum standards, unless the Department determines the exemption to be an imminent hazard to health, safety and welfare of the residents.

(c) The Department shall enforce the rules adopted or amended by the Commission with respect to nursing homes. (1961, c. 51, s. 3; 1973, c. 476, s. 128; 1981, c. 614, s. 1; 1983, c. 775, s. 1; 1995, c. 535, s. 22.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult

care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, in subsection (b), substituted "adult care" for "domiciliary" in the first and second sentences, and in the first sentence substituted "adult care homes" for "domiciliary homes".

§ 131E-105. Inspections.

(a) The Department shall inspect any nursing home and any adult care home operated as a part of a nursing home in accordance with rules adopted by the Commission.

(b) Notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department, when necessary for investigating compliance with this Part or rules promulgated by the Commission, may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the facility being inspected unless that patient objects in writing to review of that patient's records. Physicians, psychologists, psychiatrists, nurses, and anyone else interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, "Communications between physician and patient," or any other rules of law, if the patient has not made written objection to this disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information which is provided without malice or fraud to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, "Public records' defined." Prior to releasing any information or allowing any inspections referred to in this subsection, the patient must upon admission be advised in writing by the facility that the patient has the right to object in writing to the release of information or review of the records and that by an objection in writing the patient may prohibit the inspection or release of the records.

(c) Authorized representatives of the Department with identification to this effect shall have at all times the right of proper entry upon any and all parts of the premises of any place in which entry is necessary to carry out the provisions of this Part or the rules adopted by the Commission. It shall be unlawful for any person to resist a proper entry by an authorized representative upon any premises other than a private dwelling. (1981, c. 586, s. 1; c. 614, s. 1; 1983, c. 775, s. 1; 1995, c. 535, s. 23.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social

Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995

amendment, effective October 1, 1995, substituted "adult care home" for "domiciliary home" in subsection (a).

§ 131E-106. Evaluation of residents in adult care homes.

The Department shall prescribe the method of evaluation of residents in the adult care portion of a combination home in order to determine when any of these residents is in need of professional medical and nursing care as provided in licensed nursing homes. (1963, c. 859; 1981, c. 833; 1983, c. 775, s. 1; 1995, c. 535, s. 24.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult

care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care homes" for "domiciliary homes" in the catchline and substituted "adult care" for "domiciliary".

Part B. Nursing Home Patients' Bill of Rights.

§ 131E-115. Legislative intent.

It is the intent of the General Assembly to promote the interests and well-being of the patients in nursing homes and adult care homes licensed pursuant to G.S. 131E-102, and patients in a nursing home operated by a hospital which is licensed under Article 5 of Chapter 131E of the General Statutes. It is the intent of the General Assembly that every patient's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the patient in the fullest possible exercise of these rights. (1977, c. 897, s. 1; 1983, c. 143, s. 2; c. 775, s. 1; 1995, c. 509, s. 72; c. 535, s. 25.)

Editor's Note. —

Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — Session Laws 1995, c. 509, s. 72, effective July 29, 1995, substituted "Chapter 131E of the General Statutes" for "G.S. Chapter 131E" in the first sentence.

Session Laws 1995, c. 535, s. 25, effective October 1, 1995, substituted "adult care homes" for "homes for the aged and disabled" in the first sentence.

§ 131E-128. Nursing home advisory committees.

(a) It is the purpose of the General Assembly that community advisory committees work to maintain the intent of this Part within the nursing homes in this State, including nursing homes operated by hospitals licensed under Article 5 of G.S. Chapter 131E. It is the further purpose of the General Assembly that the committees promote community involvement and cooperation with nursing

homes and an integration of these homes into a system of care for the elderly.

- (b)(1) A community advisory committee shall be established in each county which has a nursing home, including a nursing home operated by a hospital licensed under Article 5 of G.S. Chapter 131E, shall serve all the homes in the county, and shall work with each home in the best interest of the persons residing in each home. In a county which has one, two, or three nursing homes, the committee shall have five members. In a county with four or more nursing homes, the committee shall have one additional member for each nursing home in excess of three.
- (2) In each county with four or more nursing homes, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each nursing home in the county. Each member must serve on at least one subcommittee.
- (3) Each committee shall be appointed by the board of county commissioners. Of the members, a minority (not less than one-third, but as close to one-third as possible) must be chosen from among persons nominated by a majority of the chief administrators of nursing homes in the county and of the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes. If the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes fail to make a nomination within 45 days after written notification has been sent to them by the board of county commissioners requesting a nomination, these appointments may be made by the board of county commissioners without nominations.
- (c) Each committee member shall serve an initial term of one year. Any person reappointed to a second or subsequent term in the same county shall serve a three-year term. Persons who were originally nominees of nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes, or who were appointed by the board of county commissioners when the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes failed to make nominations, may not be reappointed without the consent of a majority of the nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes within the county. If the nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes fail to approve or reject the reappointment within 45 days of being requested by the board of county commissioners, the commissioners may reappoint the member if they so choose.
- (d) Any vacancy shall be filled by appointment of a person for a one-year term. Any person replacing a member nominated by the chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes or a person appointed when the chief administrators and the governing bodies of the hospitals licensed under Article 5 of

G.S. Chapter 131E, which operate nursing homes failed to make a nomination shall be selected from among persons nominated by the administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes, as provided in subsection (b). If the county commissioners fail to appoint members to a committee, or fail to fill a vacancy, the appointment may be made or vacancy filled by the Secretary or the Secretary's designee no sooner than 45 days after the commissioners have been notified of the appointment or vacancy if nomination or approval of the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes is not required. If nominations or approval of the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes is required, the appointment may be made or vacancy filled by the Secretary or the Secretary's designee no sooner than 45 days after the commissioners have received the nomination or approval, or no sooner than 45 days after the 45-day period for action by the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes.

(e) The committee shall elect from its members a chair, to serve a one-year term.

(f) Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by a committee, or employee or governing board member or immediate family member of an employee or governing board member of a home served by a committee, or immediate family member of a patient in a home served by a committee may be a member of a committee. Membership on a committee shall not be considered an office as defined in G.S. 128-1 or G.S. 128-1.1. Any county commissioner who is appointed to the committee shall be deemed to be serving on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. The names of the committee members and the date of expiration of their terms shall be filed with the Division of Aging, which shall supply a copy to the Division of Facility Services.

(g) The Division of Aging, Department of Human Resources, shall develop training materials which shall be distributed to each committee member and nursing home. Each committee member must receive training as specified by the Division of Aging prior to exercising any power under subsection (h) of this section. The Division of Aging, Department of Human Resources, shall provide the committees with information, guidelines, training, and consultation to direct them in the performance of their duties.

(h)(1) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.

(2) Each committee shall quarterly visit the nursing home it serves. For each official quarterly visit, a majority of the committee members shall be present. In addition, each

committee may visit the nursing home it serves whenever it deems it necessary to carry out its duties. In counties with four or more nursing homes, the subcommittee assigned to a home shall perform the duties of the committee under this subdivision, and a majority of the subcommittee members must be present for any visit.

- (3) Each member of a committee shall have the right between 10:00 A.M. and 8:00 P.M. to enter into the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to homes served by those subcommittees to which the member has been appointed.
- (4) The committee or subcommittee may communicate through its chair with the Department or any other agency in relation to the interest of any patient. The identity of any complainant or resident involved in a complaint shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.
- (5) Each home shall cooperate with the committee as it carries out its duties.
- (6) Before entering into any nursing home, the committee, subcommittee, or member shall identify itself to the person present at the facility who is in charge of the facility at that time.

(i) Any written communication made by a member of a nursing home advisory committee within the course and scope of the member's duties, as specified in G.S. 131E-128, shall be privileged to the extent provided in this subsection. This privilege shall be a defense in a cause of action for libel if the member was acting in good faith and the statements or communications do not amount to intentional wrongdoing.

To the extent that any nursing home advisory committee or any member thereof is covered by liability insurance, that committee or member shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance. (1977, c. 897, s. 2; 1977, 2nd Sess., c. 1192, s. 1; 1983, c. 143, ss. 4-9; c. 775, s. 1; 1987, c. 682, s. 1; 1995, c. 254, s. 7.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted the present second sentence of subdivision (h)(4) for the former second

sentence, which read, "The names of all complaining persons shall remain confidential unless written permission is given for disclosure."

§ 131E-129. Penalties.

(a) Violations classified. — The Department shall impose an administrative penalty in accordance with provisions of this Part on any facility which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations issued for violations shall be classified according to the nature of the violation as follows:

- (1) "Type A Violation" means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which creates substantial risk that death or serious phys-

ical harm to a resident will occur or where such harm has occurred. Type A Violations shall be abated or eliminated immediately. The Department shall impose a civil penalty in an amount not less than two hundred fifty dollars (\$250.00) nor more than five thousand dollars (\$5,000) for each Type A Violation.

(2) "Type B Violation" means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which presents a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur. The Department may impose a civil penalty in an amount up to five hundred dollars (\$500.00) for each Type B Violation. A citation for a Type B Violation which relates to the physical plant, systems, or equipment of the facility and which causes no harm to a resident of the facility shall provide 10 days to correct the violation. If such a Type B Violation, which is not a repeat violation as specified in (b)(3) of this section, is corrected within the 10 days, no civil penalty shall be imposed.

(b) Penalties for failure to correct violations within time specified. —

(1) Where a facility has failed to correct a Type A Violation, the Department shall assess the facility a civil penalty in the amount of up to five hundred dollars (\$500.00) for each day that the deficiency continues. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(2) Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department, the Department shall assess the facility a civil penalty in the amount of up to two hundred dollars (\$200.00) for each day that the deficiency continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall conduct an on-site inspection of the facility to insure that the violation has been corrected.

(3) The Department shall impose a civil penalty which is treble the amount assessed under subdivision (1) or (2) of subsection (a) when a facility under the same management, ownership, or control:

- a. Has received a citation and paid a fine, or
- b. Has received a citation for which the Department in its discretion granted to it under subdivision (2) of subsection (a) but did not impose a penalty,

for violating the same specific provision of a statute or regulation for which it has received a citation during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 13 of this Chapter.

(c) Factors to be considered in determining amount of initial penalty. — In determining the amount of the initial penalty to be

imposed under this section, the Department shall consider the following factors:

- (1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
- (2) The reasonable diligence exercised by the licensee and efforts to correct violations;
- (3) The number and type of previous violations committed by the licensee;
- (4) The amount of assessment necessary to insure immediate and continued compliance; and
- (5) The number of patients put at risk by the violation.

(d) The Department shall impose a civil penalty on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this section, provided, however, that the Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months, or within the time period of the previous licensure inspection, whichever time period is longer.

(h) The Department shall not assess an administrative penalty against a facility under this section if a civil monetary penalty has been assessed for the same violation under federal enforcement laws and regulations. (1987, c. 600, s. 2; 1989, c. 556, s. 2; 1993, c. 390, s. 2; 1995, c. 396, s. 1.)

Effect of Amendments. —

The 1995 amendment, effective July 10, 1995, added subsection (h).

ARTICLE 7.

*Regulation of Ambulance Services.***§ 131E-155.1. Ambulance Provider License required.**

(a) No person, firm, corporation, or association shall furnish, operate, conduct, maintain, advertise, or otherwise engage in or profess to be engaged in the business or service of treating or transporting patients upon the streets or highways, waterways, or airways in North Carolina unless a valid Ambulance Provider License has been issued by the Department.

(b) Before an Ambulance Provider License may be issued, the person, firm, corporation, or association seeking the license shall apply to the Department for this license. Application shall be made upon forms and according to procedures established by the Department. Prior to issuing an original or renewal Ambulance Provider License, the Department shall determine that the applicant meets all requirements for this license as set forth in this Article and in the rules adopted under this Article. Ambulance Provider Licenses shall be valid for a period specified by the Department, provided that the period shall be a minimum of four years unless action is taken under subsection (d) of this section.

(c) The Commission shall adopt rules setting forth the qualifications required for obtaining or renewing an Ambulance Provider License.

(d) The Department may deny, suspend, amend, or revoke an Ambulance Provider License in any case in which the Department finds that there has been a substantial failure to comply with the provisions of this Article or the rules adopted under this Article. The Department's decision to deny, suspend, amend, or revoke an Ambulance Provider License may be appealed by the applicant or licensee pursuant to the provisions of Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) Operating as an ambulance provider without a valid Ambulance Provider License is a Class 3 misdemeanor. Each day's operation as an ambulance provider without a license is a separate offense. (1995, c. 413, s. 1.)

Editor's Note. — Session Laws 1995, c. 413, s. 2, provides that this section is effective December 1, 1995, and is appli-

cable to licenses required on or after that date and to offenses committed on or after that date.

ARTICLE 8.

*Cardiac Rehabilitation Certification Program.***§ 131E-165. Title; purpose.**

(a) This Article shall be known as the "Cardiac Rehabilitation Certification Program."

(b) The purpose of this Article is to provide for the development, establishment, and enforcement of rules and certification:

- (1) For the care and treatment of individuals in outpatient cardiac rehabilitation programs; and

- (2) For the maintenance and operation of cardiac rehabilitation programs to ensure safe and adequate treatment of individuals in cardiac rehabilitation programs. (1983, c. 775, s. 1; 1995, c. 182, s. 1.)

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, in subsection (b) deleted “basic” preceding “rules and certification” in the introduc-

tory language and substituted “outpatient” for “out of hospital” in subdivision (b)(1).

§ 131E-166. Definitions.

As used in this Article, unless otherwise specified:

- (1) “Cardiac Rehabilitation Program” means a program certified under this Article for the delivery of cardiac rehabilitation services to outpatients and includes, but shall not be limited to, coordinated, physician-directed, individualized programs of therapeutic activity and adaption designed to assist the cardiac patient in attaining the highest rehabilitative potential.
- (2) “Certification” means the issuance of a certificate by the Department upon determination that cardiac rehabilitation services offered at a given program site meet all cardiac rehabilitation program rules. (1983, c. 775, s. 1; 1995, c. 182, s. 2.)

Effect of Amendments. — The 1995 amendment, effective June 6, 1995, substituted “outpatients” for “clients in en-

vironments other than hospitals” in subdivision (1).

ARTICLE 9.

Certificate of Need.

§ 131E-175. Findings of fact.

Editor’s Note. — Session Laws 1995, c. 507, s. 19.9(b) provides that any person who contracts to provide inpatient chemical dependency or substance abuse services to inmates of the Department of Correction may construct and operate a new facility for that purpose without a certificate of need from the Department

of Human Resources pursuant to Article 9 of Chapter 131E.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 contains a severability clause.

CASE NOTES

Cited in *Laurel Wood of Henderson, Inc. v. North Carolina Dep’t of Human*

Resources, 117 N.C. App. 601, 452 S.E.2d 334 (1995).

§ 131E-176. Definitions.

CASE NOTES

Treating eating disorders in substance abuse/chemical dependency treatment beds would constitute redistributing health service facility bed capacity to a new institutional health ser-

vice, i.e., psychiatric service, which would require its own certificate of need. *Laurel Wood of Henderson, Inc. v. North Carolina Dep't of Human Resources*, 117 N.C. App. 601, 452 S.E.2d 334 (1995).

§ 131E-178. Activities requiring certificate of need.

CASE NOTES

Treating eating disorders in substance abuse/chemical dependency treatment beds would constitute redistributing health service facility bed capacity to a new institutional health ser-

vice, i.e., psychiatric service, which would require its own certificate of need. *Laurel Wood of Henderson, Inc. v. North Carolina Dep't of Human Resources*, 117 N.C. App. 601, 452 S.E.2d 334 (1995).

§ 131E-180.1. (See editor's note for expiration) Home health agency service restriction.

A home health agency shall not provide part-time, intermittent nursing care, therapy, medical social services, and home health aide services reimbursed by Medicare and Medicaid to patients located outside its service area.

For those home health agencies for which no certificate of need was issued, the home health agency's geographic service area is only those counties in which patients were served as shown on the existing home health agency's licensure renewal form on file with the Licensure Section of the Division of Facility Services as of January 1, 1991.

For those home health agencies for which a certificate of need was issued the home health agency's geographic service area is as follows:

- (1) Where the service area is identified on the certificate of need issued to the home health agency, the agency's geographic service area is the service area identified on the certificate of need.
- (2) Where the service area is not identified on the certificate of need issued to the home health agency, the agency's geographic service area is the proposed geographic service area that is identified in the application for a certificate of need and approved by the Certificate of Need Section of the Division of Facility Services. (1995, c. 359, s. 1.)

Editor's Note. — Session Laws 1995, c. 359, s. 2, made this section effective upon ratification. The Act was ratified June 30, 1995.

Session Laws 1995, c. 359, s. 2, provides this section expires when the Divi-

sion of Facility Services completes and implements the current rewrite of home care licensure rules, but the expiration shall be no earlier than February 1, 1996, and no later than June 30, 1996.

§ 131E-183. Review criteria.

CASE NOTES

Review of Criteria by Agency. — The certificate of need law does not contemplate that the agency will review any criteria competitively, and subsequently find one applicant nonconforming to a criterion simply because another applicant is found conforming, as the intent of

the legislature is to have the agency first ensure that each application comports with the statutory and regulatory criteria. *Britthaven, Inc. v. North Carolina Dep't of Human Resources*, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

§ 131E-185. Review process.

CASE NOTES

Cited in *Britthaven, Inc. v. North Carolina Dep't of Human Resources*, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

§ 131E-186. Decision.

CASE NOTES

Notice of Findings and Conclusions. — Although the agency must review applications in accordance with statutory criteria and administrative rules adopted by the Department of Human Resources, subsection (b) requires the agency to provide notice of its findings and conclusions upon which it based its decision, but does not limit those findings to statutory criteria of rules. *Britthaven, Inc. v. North Carolina Dep't of Human Resources*, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

Review of Criteria by Agency. — The certificate of need law does not contemplate that the agency will review any criteria competitively, and subsequently find one applicant nonconforming to a criterion simply because another applicant is found conforming, as the intent of the legislature is to have the agency first ensure that each application comports with the statutory and regulatory criteria. *Britthaven, Inc. v. North Carolina Dep't of Human Resources*, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

§ 131E-188. Administrative and judicial review.

CASE NOTES

The exercise of the right to an evidentiary hearing under the contested case provision of subsection (a) does not commence a de novo proceeding by the administrative law judge (ALJ) intended to lead to a formulation of the final decision pursuant to § 150B-23(a), the ALJ, in a contested case hearing under the certificate of need law and the Administrative Procedure Act, § 150B-1 et seq., determines whether the petitioner has met its burden in showing that the agency substantially prejudiced petitioner's rights, and

that the agency also acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule, based on a hearing limited to the evidence that is presented or available to the agency during the review period. *Britthaven, Inc. v. North Carolina Dep't of Human Resources*, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

Cited in *Britthaven, Inc. v. North Carolina Dep't of Human Resources*, 118 N.C. App. 379, 455 S.E.2d 455 (1995).

ARTICLE 9A.

*Certificate of Public Advantage.***§ 131E-192.2. Definitions.**

The following definitions apply in this Article:

- (1) "Attorney General" means the Attorney General of the State of North Carolina or any attorney on his or her staff to whom the Attorney General delegates authority and responsibility to act pursuant to this Article.
- (2) "Cooperative agreement" means an agreement among two or more hospitals, between a hospital and any other person, or between a person who controls a hospital and another hospital or person who controls a hospital for any of the following:
 - a. The sharing, allocation, or referral of patients, personnel, instructional programs, support services and facilities, or medical, diagnostic, or laboratory facilities or equipment, or procedures or other services traditionally offered by hospitals.
 - b. A purchase of assets pursuant to a merger or sale, a partnership, a joint venture, or any other affiliation by which ownership or control over all or substantially all of the stock, assets, or activities of one or more hospitals or persons who control hospitals are transferred to another hospital or person who controls a hospital."Cooperative agreement" shall not include any agreement that would permit self-referrals of patients by a health care provider that is otherwise prohibited by law.
- (3) "Department" means the Department of Human Resources.
- (4) "Federal or State antitrust laws" means any and all federal or State laws prohibiting monopolies or agreements in restraint of trade, including the federal Sherman Act, Clayton Act, Federal Trade Commission Act, and North Carolina laws codified in Chapter 75 of the General Statutes that prohibit restraints on competition.
- (5) "Hospital" means any hospital required to be licensed under Chapters 131E or 122C of the General Statutes.
- (6) "Person" means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency. (1993, c. 529, s. 5.2; 1995, c. 205, s. 1.)

Effect of Amendments. — The 1995 amendment, effective June 8, 1995, and applicable to applications filed on or after that date, in subdivision (2), at the end of the introductory language, substituted "or between a person who controls a hospital and another hospital or person who controls a hospital for any of the following:" for "for the" and made a related change; added the subdivision (2)a.

and (2)b. designations; added "the" to the beginning of subdivision (2)a.; added subdivision (2)b.; and in the last sentence of the subsection, following "any agreement" deleted "by which ownership over substantially all of the stock, assets, or activities of one or more previously licensed and operating hospitals is transferred nor any agreement"; and made a stylistic change.

§ 131E-192.11. Fees for applications and periodic reports.

(a) The Department and the Attorney General shall establish a schedule of fees for filing an application for a certificate of public advantage and for filing a periodic report based on the total cost of the project for which the application or periodic report is made. The fee for filing an application may not exceed fifteen thousand dollars (\$15,000). The fee for filing a periodic report may not exceed two thousand five hundred dollars (\$2,500). The fee schedule established should generate sufficient revenue to offset the costs of the program. An application filing fee must be paid to the Department at the time an application for a certificate of public advantage is submitted to it pursuant to G.S. 131E-192.3. A periodic report filing fee must be paid to the Department at the time a periodic report is submitted to it pursuant to G.S. 131E-192.9.

(b) If the Department or the Attorney General determines that consultants are needed to complete a review of an application, an additional application fee may be established by prior agreement with the applicants before the application is considered. The amount of the additional fee may not exceed the costs of contracting with the necessary consultants. The additional fee shall not be considered in determining whether an application fee exceeds the maximum application fee amount set in subsection (a) of this section. (1993, c. 529, s. 5.2; 1995, c. 205, s. 2.)

Effect of Amendments. — The 1995 amendment, effective June 8, 1995, and applicable to applications filed on or af-

ter that date, added the subsection (a) designation and added subsection (b).

ARTICLE 11.

North Carolina Medical Database Commission.

§§ 131E-210 through 131E-213: Repealed by Session Laws 1995, c. 517, s. 39, effective October 1, 1995.

Editor's Note. — Session Laws 1995, c. 517, s. 38, effective July 29, 1995, repealed Session Laws 1985, c. 757, s. 208(d), as amended by Session Laws 1991, c. 480, s. 1, effective July 1, 1991,

which provided that this Article would expire and the North Carolina Medical Database Commission would terminate on July 1, 1996.

ARTICLE 11A.

Medical Care Data.

§ 131E-214. Title and purpose.

(a) This Article is the Medical Care Data Act.

(b) The General Assembly finds that, as a result of rising medical care costs and the concern expressed by medical care providers, medical care consumers, third-party payors, and health care planners involved with planning for the provision of medical care, there is an urgent and continuing need to understand patterns and trends

in the use and cost of medical care services in this State. The purposes of this Article are as follows:

- (1) To ensure that there is an information base containing medical care data from throughout the State that can be used to improve the appropriate and efficient use of medical care services and maintain an acceptable quality of health care services in this State.
- (2) To ensure that the necessary medical care data is available to university researchers, State public policymakers, and all other interested persons to improve the decision-making process regarding access, identified needs, patterns of medical care, charges, and use of appropriate medical care services.
- (3) To ensure that a data processor receiving data under this Article protects patient confidentiality.

These purposes are to be accomplished by requiring that all hospitals and freestanding ambulatory surgical facilities submit information necessary for a review and comparison of charges, utilization patterns, and quality of medical services to a data processor that maintains a statewide database of medical care data and that makes medical care data available to interested persons, including medical care providers, third-party payors, medical care consumers, and health care planners. (1995, c. 517, s. 39(b).)

Editor's Note. — Session Laws 1995, c. 517, s. 42, made this Article effective October 1, 1995.

Session Laws 1995, c. 517, which enacted this article, in s. 39(e) provides that this article does not require a person, corporation, or other entity not previously required to report data to the Medical Database Commission to report data under this article, nor does it require a person, corporation, or other entity to be a statewide data processor.

Session Laws 1995, c. 517, s. 39(h) provides that of funds appropriated in Session Laws 1995, c. 324, \$150,000 is transferred for fiscal year 1995-96 from the Department of Insurance to the Department of Human Resources, Division of Facility Services to be used to certify statewide data processors under Article 11A of Chapter 131E.

Session Laws 1995, c. 517, ss. 39(i) and 41, contain severability clauses.

§ 131E-214.1. Definitions.

As used in this Article:

- (1) "Division" means the Division of Facility Services of the Department of Human Resources.
- (2) "Freestanding ambulatory surgical facility" means a facility licensed under Part D of Article 6 of this Chapter.
- (3) "Hospital" means a facility licensed under Article 5 of this Chapter or Article 2 of Chapter 122C of the General Statutes, but does not include the following:
 - a. A facility with all of its beds designated for medical type "LTC" (long-term care).
 - b. A facility with the majority of its beds designated for medical type "PSY-3" (mental retardation).
 - c. A facility operated by the North Carolina Department of Correction.
- (4) "Patient data" means data that includes a patient's age, sex, zip code, third-party coverage, principal and other diagnosis, date of admission, procedure and discharge date, principal and other procedures, total charges and components of the total charges, attending physician identification

number, and hospital or freestanding ambulatory surgical facility identification number.

- (5) "Patient identifying information" means the name, address, social security number, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a health care provider if that number does not consist of or contain numbers, including social security or drivers license numbers, that could be used to identify a patient with reasonable accuracy and speed from sources external to the health care provider.
- (6) "Statewide data processor" means a data processor certified by the Division as capable of complying with the requirements of G.S. 131E-214.4. The Division may deny, suspend, or revoke a certificate, in accordance with Chapter 150B of the General Statutes, if the statewide data processor does not comply with or is not capable of complying with the requirements of G.S. 131E-214.4. The Division is authorized to promulgate rules concerning the receipt, consideration, and limitation of a certificate applied for or issued under this Article. (1995, c. 517, s. 39(b).)

§ 131E-214.2. Data submission required.

Except as prohibited by federal law or regulation, each hospital and freestanding ambulatory surgical facility shall submit patient data to a statewide data processor within 60 calendar days after the close of each calendar quarter for patients that were discharged or died during that quarter. (1995, c. 517, s. 39(b).)

§ 131E-214.3. Patient data not public records.

(a) The following are not public records under Chapter 132 of the General Statutes:

- (1) Patient data furnished to and maintained by a statewide data processor pursuant to this Article.
- (2) Compilations of patient data prepared for release or dissemination by a statewide data processor pursuant to this Article.
- (3) Patient data furnished by a statewide data processor to the State.

(b) Compilations of data under subdivision (a)(3) of this section, prepared for release or dissemination by the State, are public records.

(c) The State shall not allow proprietary information, including patient data, that it receives from a statewide data processor to be used by a person for commercial purposes. The State shall require the person requesting this information to certify that it will not use the information for commercial purposes.

(d) A person is immune from liability for actions arising from the required submission of data under this Article. (1995, c. 517, s. 39(b).)

§ 131E-214.4. Statewide data processor.

- (a) A statewide data processor shall perform the following duties:
- (1) Make available annually to the Division, at no charge, a report that includes a comparison of the 35 most frequently reported charges of hospitals and freestanding ambulatory surgical facilities. The report is a public record and shall be made available to the public in accordance with Chapter 132 of the General Statutes. Publication or broadcast by the news media shall not constitute a resale or use of the data for commercial purposes.
 - (2) Receive patient data from hospitals and freestanding ambulatory surgical facilities throughout this State.
 - (3) Compile and maintain a uniform set of data from the patient data submitted.
 - (4) Analyze the patient data.
 - (5) Compile reports from the patient data and make the reports available upon request to interested persons at a reasonable charge determined by the data processor.
 - (6) Ensure that adequate measures are taken to provide system security for all data and information received from hospitals and freestanding ambulatory surgical facilities pursuant to this Article.
 - (7) Protect the confidentiality of patient records and comply with applicable laws and regulations concerning patient confidentiality, including the confidentiality of patient-identifying information. The data processor shall not disclose patient-identifying information unless (i) the information was originally submitted by the party requesting disclosure or (ii) the State Health Director requests specific individual records for the purpose of protecting and promoting the public health under Chapter 130A of the General Statutes, and the disclosure is not otherwise prohibited by federal law or regulation. Such records shall be made available to the State Health Director at a reasonable charge. Such records made available to the State Health Director are not public records; the State Health Director shall maintain their confidentiality and shall not make the records available notwithstanding G.S. 130A-374(a)(2).
- (b) The Department of Human Resources may take adverse action against a hospital under G.S. 131E-78 or G.S. 122C-24 or against a freestanding ambulatory surgical center under G.S. 131E-148 for a violation of this Article. (1995, c. 517, s. 39(b).)

ARTICLE 13.***Temporary Management of Long-Term Care Facilities.*****§ 131E-231. Definitions.**

As used in this Article, unless otherwise specified:

- (1) "Long-term care facility" means a nursing home as defined in G.S. 131E-101(6) and an adult care home as defined in G.S. 131D-2(a)(3) or G.S. 131E-101(4).
- (2) "Resident" means a person who has been admitted to a long-term care facility.

- (3) "Respondent" means the person or entity holding a license pursuant to G.S. 131E-102 or G.S. 131D-2 or a person or entity operating a long-term care facility subject to licensure without a license. (1993, c. 390, s. 1; 1995, c. 535, s. 26.)

Editor's Note. — Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domicil-

iary care homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, rewrote subdivision (1).

§ 131E-242. Contingency fund.

(a) The Department shall establish a temporary management contingency fund from the proceeds of penalties collected by the Department under the provisions of G.S. 131E-109 and G.S. 131E-129 for nursing facilities, and G.S. 131D-2 and G.S. 131D-34 for adult care homes.

(b) Upon a showing that proper expenses of the temporary management under this Article exceed the operating funds of the long-term care facility, the court, in its discretion, may order that the Department provide funds from the contingency fund to the temporary manager to operate the facility and compensate the temporary manager.

(c) When the total funds available in the contingency fund exceed five hundred thousand dollars (\$500,000), the Department may reallocate any or all of the amount in excess of five hundred thousand dollars (\$500,000) for other activities intended to protect the health and property of residents. (1993, c. 390, s. 1; 1995, c. 535, s. 27.)

Editor's Note. —

Session Laws 1995, c. 535, which amended this section, in s. 37 provides: "Rules adopted by the Department of Human Resources, the Medical Care Commission, and the Social Services Commission regulating domiciliary care

homes prior to the effective date of this act remain in effect for adult care homes until amended or repealed."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, substituted "adult care homes" for "domiciliary homes" in subsection (a).

ARTICLE 14.

Disposal of Surplus Property to Aid Other Countries.

§ 131E-250. Disposition of surplus property by public and State hospitals.

(a) As used in this section, "public hospital" has the same meaning as in G.S. 159-39. A State hospital is any hospital operated by the State.

(b) A public hospital or a State hospital may donate medical equipment it determines is no longer needed by the hospital to any of the following if the property so donated is to be used by a hospital or medical facility in another country:

- (1) A corporation that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

- (2) The United States or any agency of it.
- (3) The government of a foreign country or any political subdivision of that country.
- (4) The United Nations or an agency of it.
- (5) Other eleemosynary institutions and groups. (1993, c. 529, s. 7.6; 1995, c. 509, s. 73.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, in the introductory language of subsection (b) added “of the following if the property so donated is to be used by a hospital or medical facility in another country”; in subdivision (b)(1) substituted “A corporation that” for “Corporation which”; in

subdivision (b)(2) added “The” at the beginning; in subdivision (b)(4) substituted “it” for “it; or to”; deleted “if the property so donated is to be used by a hospital or medical facility in another country” from the end of the section; and made punctuation and stylistic changes.

Article 1

General Provisions

§ 133.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

Adopted Code. — As to construction of the Office of State Budget and Management from the provisions of the Office of the Administrator and Commissioner of the Prison, Reformatory, Legislative Building, 1935, and Chapter Laws 1944 (Part 2, § 133.1) and 1945 (Part 2, § 133.1).

As to the construction of the Office of State Budget and Management from the provisions of the Office of the Administrator and Commissioner of the Prison, Reformatory, Legislative Building, 1935, and Chapter Laws 1944 (Part 2, § 133.1) and 1945 (Part 2, § 133.1).

As to construction of the Office of State Budget and Management from the provisions of the Office of the Administrator and Commissioner of the Prison, Reformatory, Legislative Building, 1935, and Chapter Laws 1944 (Part 2, § 133.1) and 1945 (Part 2, § 133.1).

Chapter Laws 1944, c. 509, § 73, provides: “Except for necessary changes in structure, design and construction, the provisions of Title 2, § 133.1, and all of the other provisions of the Code of Laws of the State of New York, as amended, shall remain in full force and effect, notwithstanding any repeal or amendment thereof.”

As to construction of the Office of State Budget and Management from the provisions of the Office of the Administrator and Commissioner of the Prison, Reformatory, Legislative Building, 1935, and Chapter Laws 1944 (Part 2, § 133.1) and 1945 (Part 2, § 133.1).

As to construction of the Office of State Budget and Management from the provisions of the Office of the Administrator and Commissioner of the Prison, Reformatory, Legislative Building, 1935, and Chapter Laws 1944 (Part 2, § 133.1) and 1945 (Part 2, § 133.1).

As to construction of the Office of State Budget and Management from the provisions of the Office of the Administrator and Commissioner of the Prison, Reformatory, Legislative Building, 1935, and Chapter Laws 1944 (Part 2, § 133.1) and 1945 (Part 2, § 133.1).

Chapter Laws 1944, c. 509, § 73, provides: “Except for necessary changes in structure, design and construction, the provisions of Title 2, § 133.1, and all of the other provisions of the Code of Laws of the State of New York, as amended, shall remain in full force and effect, notwithstanding any repeal or amendment thereof.”

Chapter Laws 1944, c. 509, § 73, provides: “Except for necessary changes in structure, design and construction, the provisions of Title 2, § 133.1, and all of the other provisions of the Code of Laws of the State of New York, as amended, shall remain in full force and effect, notwithstanding any repeal or amendment thereof.”

Chapter 132.

Editor's Note. — The legislation and annotations affecting Chapter 132 have been included in a recently published replacement chapter.

Chapter 133.

Public Works.

Article 1.

General Provisions.

Sec.

133-3. Specifications to carry competitive items; substitution of materials.

133-4. Violation of Chapter made misdemeanor.

133-4.1. Guaranteed energy savings contracts.

Article 3.

Regulation of Contractors for Public Works.

Sec.

133-23. Definition.

133-28. Civil damages; liability; statute of limitations.

133-31. Perjury; punishment.

133-32. Gifts and favors regulated.

ARTICLE 1.

General Provisions.

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

Editor's Note. — As to exemption of the Office of State Budget and Management from the requirements of this section in the administration and implementation of the Prison Facilities Legislative Bond Act of 1990, see Session Laws 1989 (Reg. Sess., 1990), c. 933, s. 6(4).

As to the exemption of the Office of State Budget and Management from the requirements of this section in the implementation of providing prison facilities under the provisions of the State Prison and Youth Services Facilities Bond Act, see Session Laws 1989 (Reg. Sess., 1990), c. 935, s. 6(a)(4).

As to exemption of the Office of State Budget and Management from the requirements of subsection (b) of this section with respect to facilities authorized for the Department of Correction, see Session Laws 1991, c. 689, s. 239(f), as amended by Session Laws 1991 (Reg. Sess., 1992), c. 1044, s. 41(b).

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions of Titles I, II, and III of this act shall apply only to funds appropriated for and activities occurring during the 1991-93 biennium."

As to exemption of the Office of State Construction of the Department of Ad-

ministration from subsection (g) of this section to the extent necessary to expedite delivery with respect to construction of certain state prison and youth service facilities, see Session Laws 1993, c. 550, s. 6.

As to exemption of the Office of State Construction of the Department of Administration from the requirements of subsection (g) of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), 143-128, 143-129, 143-131, 143-132, 143-134, 143-135.26, and 143-408.1 through 143-408.7.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Im-

provements Appropriations Act of 1995. Session Laws 1995, c. 507, s. 28.12 contains a severability clause.

§ 133-3. Specifications to carry competitive items; substitution of materials.

All architects, engineers, designers, or draftsmen, when providing design services, or writing specifications, directly or indirectly, for materials to be used in any city, county or State work, shall specify in their plans the required performance and design characteristics of such materials. However, when it is impossible or impractical to specify the required performance and design characteristics for such materials, then the architect, engineer, designer or draftsman may use a brand name specification so long as they cite three or more examples of items of equal design or equivalent design, which would establish an acceptable range for items of equal or equivalent design. The specifications shall state clearly that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Where it is impossible to specify performance and design characteristics for such materials and impossible to cite three or more items due to the fact that there are not that many items of similar or equivalent design in competition, then as many items as are available shall be cited. On all city, county or State works, the maximum interchangeability and compatibility of cited items shall be required. The brand of product used on a city, county or State work shall not limit competitive bidding on future works. If an architect, engineer, designer, draftsman or owner prefers a particular brand of material, then such brand shall be bid as an alternate to the base bid and in such case the base bid shall cite three or more examples of items of equal or equivalent design, which would establish an acceptable range for items of equal or equivalent design. Substitution of materials, items, or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval; such approval or disapproval shall be made by the architect or engineer prior to the opening of bids. The purpose of this statute is to mandate and encourage free and open competition on public contracts. (1933, c. 66, s. 3; 1951, c. 1104, s. 5; 1993, c. 334, s. 7.1.)

Editor's Note. — Session Laws 1993, c. 334, s. 7.1, amended this section, effective July 13, 1993, and applicable to all

construction and renovation projects for any city, county or State works that start the design process on or after that date.

§ 133-4. Violation of Chapter made misdemeanor.

Any person, firm, or corporation violating the provisions of this Chapter shall be guilty of a Class 3 misdemeanor and upon conviction, license to practice his profession in this State shall be withdrawn for a period of one year and he shall only be subject to a fine of not more than five hundred dollars (\$500.00). (1933, c. 66, s. 4; 1993, c. 539, s. 969; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 3" preceding "misdemeanor" and inserted "only" following "shall".

§ 133-4.1. Guaranteed energy savings contracts.

Except for G.S. 133-1.1, the provisions of this Article shall not apply to energy conservation measures undertaken as part of a guaranteed energy savings contract entered into pursuant to the provisions of Part 2 of Article 3B of Chapter 143 of the General Statutes. (1993 (Reg. Sess., 1994), c. 775, s. 8.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 11, made this

section effective upon ratification. The Act was ratified July 16, 1994.

ARTICLE 2.

Relocation Assistance.

§ 133-7. Definitions.

Editor's Note. —
In the historical citation for this sec-

tion in the main volume, "1989, c. 25" should be "1989, c. 28."

§ 133-9. Replacement housing for homeowners.

Local Modification. — City of Durham: 1993, c. 304, s.1.

ARTICLE 3.

Regulation of Contractors for Public Works.

§ 133-23. Definition.

(a) The term "governmental agency" shall include the State of North Carolina, its agencies, institutions, and political subdivisions, all municipal corporations and all other public units, agencies and authorities which are authorized to enter into public contracts for construction or repair or for procurement of goods or services.

(b) The term "person" shall mean any individual, partnership, corporation, association, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

(c) The term "subsidiary" shall mean a corporation with respect to which another corporation by virtue of its shareholdings alone has legal power, either directly or indirectly through another corporation or series of other corporations, domestic or foreign, to elect a majority of the directors. A corporation is a subsidiary of each such corporation, including any corporation through which this legal

power may be indirectly exercised. (1981, c. 764, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 38.)

§ 133-28. Civil damages; liability; statute of limitations.

(a) Any governmental agency entering into a contract which is or has been the subject of a conspiracy prohibited by G.S. 75-1 or 75-2 shall have a right of action against the participants in the conspiracy to recover damages, as provided herein. The governmental agency shall have the option to proceed jointly and severally in a civil action against any one or more of the participants for recovery of the full amount of the damages. There shall be no right to contribution among participants not named defendants by the governmental agency.

(b) At the election of the governmental agency, the measure of damages recoverable under this section shall be either the actual damages or ten percent (10%) of the contract price which shall be trebled as provided in G.S. 75-16.

(c) The cause of action shall accrue at the time of discovery of the conspiracy by the governmental agency which entered into the contract. The action shall be brought within six years of the date of accrual of the cause of action. (1981, c. 764, s. 1; 1993, c. 441, s. 1.)

§ 133-31. Perjury; punishment.

Any person who shall willfully commit perjury in any affidavit taken pursuant to this Article or rules pursuant thereto shall be guilty of a felony and shall be punished as a Class I felon. (1981, c. 764, s. 1; 1993, c. 539, s. 1307; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "Class I felon" for "Class H felon".

§ 133-32. Gifts and favors regulated.

(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

- (1) Has a contract with a governmental agency; or
- (2) Has performed under such a contract within the past year; or
- (3) Anticipates bidding on such a contract in the future to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:
 - (1) Preparing plans, specifications, or estimates for public contract; or
 - (2) Awarding or administering public contracts; or
 - (3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contracts; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction

willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a Class 1 misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. (1981, c. 764, s. 1; 1987, c. 399, s. 1; 1993, c. 539, s. 970; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in subsection (b).

Chapter 134A.

Youth Services.

ARTICLE 1.

Division of Youth Services in the Department of Human Resources.

§ 134A-1. Legislative intent and purpose.

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 23.20, provides for the funding of treatment and education programs for children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior, identified as a Class in the case of Willie M., et al v. Hunt, et al.; s. 23.20(b) provides that funds appropriated by the General Assembly to the Department of Human Resources for serving members of the Willie M. Class shall be expended only for programs serving members of that Class identified in Willie M., et al v. Hunt, et al., including evaluations of potential Class members, and that the Department shall reallocate these funds among services to Class members during the year as it deems advisable; s. 23.20(d) provides for the Department to continue to implement its prospective unit cost reimbursement system, to ensure that unit cost rates reflect reasonable costs, and to reduce and/or cap rates to programs which are significantly higher than those rates paid to other programs for the same service; s. 23.20(d1) provides for review by the Department of cases whose annual cost is anticipated to be in excess of 150% of the

average annual per client expenditure of the previous fiscal year; s. 23.20(e1) provides for the Department to document and assess individual Class members' progress through the continuum of services; and s. 23.20(i) provides that if the Department determines a local program is not providing appropriate services, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation of the programs.

Session Laws 1995, c. 324, s. 23.20(e), provides that the Department of Human Resources and the Department of Public Education shall submit, by May 1 of each fiscal year, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class, which shall include specified data for each county; and s. 23.20(f) provides that those departments shall provide periodic reports of expenditures and program effectiveness on behalf of the Willie M. Class to the Fiscal Research Division, which shall include explanations of measures they have taken to control and reduce program expenditures.

Session Laws 1995, c. 324, s. 23.20(h), provides that the use of unexpended Willie M. funds from prior fiscal years to cover current or future needs of the Willie M. program is not precluded by the limitation that no funds be expended on placement and services for Willie M. Class members except funds specifically appropriated by the General Assembly for members, or funds for placement or services for which members are otherwise eligible; and that these expenditures shall not be subject to the requirements of G.S. 143-18.

Chapter 135.

Editor's Note. — The legislation and annotations affecting Chapter 135 have

been included in a recently published replacement chapter.

Chapter 136.

Roads and Highways.

Article 1.

Organization of Department of Transportation.

Sec.

136-16.6. Continuing rail appropriations.

Article 2.

Powers and Duties of Department and Board of Transportation.

136-18. Powers of Department of Transportation.

136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.

136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.

136-28.1. Letting of contracts to bidders after advertisement; exceptions.

136-28.6. Private contract participation by the Department of Transportation.

136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.

Article 3A.

Streets and Highways in and around Municipalities.

136-66.1. Responsibility for streets inside municipalities.

Article 4.

Neighborhood Roads, Cartways, Church Roads, etc.

136-68. (See editor's note) Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

136-69. Cartways, tramways, etc., laid out; procedure.

136-70. (Effective until July 1, 1997) Al-

Sec.

teration or abandonment of cartways, etc., in same manner.

Article 6.

Ferries, etc., and Toll Bridges.

136-82. Department of Transportation to establish and maintain ferries.

136-82.2. State toll bridges.

Article 6E.

North Carolina Turnpike Authority.

136-89.78 through 136-89.158. [Reserved.]

Article 6F.

North Carolina Bridge Authority.

136-89.159. Bridge projects.

136-89.160. Funding for projects.

136-89.161. North Carolina Bridge Authority.

136-89.162. Powers of the Authority.

136-89.163. Taxation of property of Authority.

136-89.164. Acquisition, disposition, or exchange of real property.

136-89.165. Cooperation by other State agencies.

136-89.166. Annual and quarterly reports.

136-89.167. Dissolution.

136-89.168 through 136-89.170. [Reserved.]

Article 7.

Miscellaneous Provisions.

136-92. Obstructing highway drains prohibited.

136-98. Prohibition of local road taxes and bonds and construction of roads by local authorities; existing contracts.

Article 11.

Outdoor Advertising Control Act.

136-140.1. Adopt-A-Highway.

Article 14.

North Carolina Highway Trust Fund.

136-176. (For contingent repeal see note) Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.

ARTICLE 1.

*Organization of Department of Transportation.***§ 136-12. Reports to General Assembly; Transportation Improvement Program submitted to members and staff of General Assembly.****Editor's Note. —**

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.2 provides: "Before approving the purchase of an aircraft from the Equipment Fund or a ferry in a Transportation Improvement Program, the Board of Transportation shall prepare an estimate of the operational costs and capital costs associated with the addition of the aircraft or ferry and shall report those additional costs to the General Assembly pursuant to G.S. 136-12(b), and to the Joint Legislative Commission on Governmental Operations."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have ef-

fects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.10 provides that the Departments of Transportation and Correction shall report, quarterly beginning October 1, 1994, to the Joint Legislative Transportation Oversight Committee on the implementation of the recommendations of the Inmate Labor Subcommittee.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

§ 136-13. Malfeasance of officers and employees of Department of Transportation, members of Board of Transportation, contractors, and others.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-14. Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-16.6. Continuing rail appropriations.

(a) There is annually appropriated one hundred percent (100%) of the annual dividends received in the prior fiscal year by the State from its ownership of stock in the North Carolina Railroad Company to the Highway Fund for use by the Department of Transportation for railroad purposes.

(b) The Department of Transportation shall include in its annual budget the purposes for which the annual dividends received by the State from its ownership of stock in the North Carolina Railroad Company will be used.

These purposes may include the following project types to be included in the annual Transportation Improvement Program:

- (1) Track and signal improvements for passenger service.
- (2) Rail passenger stations and multimodal transportation centers.
- (3) Grade crossing protection, elimination, and hazard removal.
- (4) Rail rolling stock cars and locomotives.
- (5) Rail rehabilitation.
- (6) Industrial rail access.

The Department of Transportation shall use these funds to supplement but not supplant funds allocated for projects approved as part of the Transportation Improvement Program. (1987, c. 738, s. 170(a), (c); 1989, c. 500, s. 53; 1991, c. 689, s. 65; 1995, c. 324, s. 18.2.)

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995

amendment, effective July 1, 1995, added the subsection (a) designation; deleted "and the Atlantic and North Carolina Railroad Company" preceding "to the Highway Fund" in subsection (a); and added subsection (b).

ARTICLE 2.

Powers and Duties of Department and Board of Transportation.

§ 136-18. Powers of Department of Transportation.

The said Department of Transportation shall be vested with the following powers:

- (1) The general supervision over all matters relating to the construction of the State highways, letting of contracts therefor, and the selection of materials to be used in the construction of State highways under the authority of this Chapter.
- (2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary

for the present or future relocation or initial location, above or below ground, of telephone, telegraph, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Department of Transportation.

- (3) To provide for such road materials as may be necessary to carry on the work of the Department of Transportation, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Department of Transportation any of such material, at a price to be fixed by said Department of Transportation, thereafter the Department of Transportation shall have the right to condemn the necessary right-of-way under the provisions of Article 9 of Chapter 136, to connect said deposit with any part of the system of State highways or public carrier, provided that easements to material deposits, condemned under this Article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the Department of Transportation.
- (4) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Department of Transportation with other public bodies, corporations, or persons.
- (5) To make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules,

regulations or ordinances so prescribed by the Department of Transportation shall constitute a Class 1 misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the Department of Transportation may regulate parking upon any street which forms a link in the State highway system, if said street be maintained with State highway funds.

- (6) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the Department of Transportation shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.
- (7) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from date of acquiring said roads. The Department of Transportation shall have authority to maintain all streets constructed by the Department of Transportation in towns of less than 3,000 population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Department of Transportation, whenever in the opinion of the Department of Transportation it is necessary and proper so to do.
- (8) To give suitable names to State highways and change the names as determined by the Board of Transportation of any highways that shall become a part of the State system of highways.
- (9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except for vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Human Resources, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor and each day's use shall constitute a separate offense.

- (10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or other lines, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor.
- (11) To regulate, abandon and close to use, grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State highway system and the Department of Transportation, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Department of Transportation shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Department of Transportation shall have power to close to use and abandon such grade crossing and any other crossing adjacent thereto.
- (12) The Department of Transportation shall have such powers as are necessary to comply fully with the provisions of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914 (1991), as amended, and all other federal aid acts and programs the Department is authorized to administer. The said Department of Transportation is hereby authorized to enter into all contracts and agreements with the United States government relating to survey, construction, improvement and maintenance of roads, urban area traffic operations studies and improvement projects on the streets on the State highway system and on the municipal system in urban areas, under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Transportation or otherwise provided by federal acts, and to do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future aid acts of Congress for the construction or improvement and maintenance of federal aid of State highways. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to construct and improve rural post

roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Department of Transportation and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Department of Transportation to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars (\$2,000,000).

- (13) The Department of Transportation may construct and maintain all walkways and driveways within the Mansion Square in the City of Raleigh and the Western Residence of the Governor in the City of Asheville including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.
- (14) The Department of Transportation shall have authority to provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.
- (15) The Department of Transportation shall have authority to provide facilities for the use of waterborne traffic by establishing connections between the highway system and the navigable waters of the State by means of connecting roads and piers.
- (16) The Department of Transportation, pursuant to a resolution of the Board of Transportation, shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights-of-way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights-of-way or for the widening of existing rights-of-way or the clearing of obstructions that, in the opinion of the Department of Transportation, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the Department of Transportation has agreed in writing to accept the property so acquired in exchange for that to be used by the Department of Transportation, and when, in the opinion of the Department of Transportation, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.

- (17) The Department of Transportation is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. Said Department of Transportation is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of Transportation is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in the preceding portion of this subdivision.
- (18) To cooperate with appropriate agencies of the United States in acquiring rights-of-way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.
- (19) To prohibit the erection of any informational, regulatory, or warning signs within the right-of-way of any highway project built within the corporate limits of any municipality in the State where the funds for such construction are derived in whole or in part from federal appropriations expended by the Department of Transportation, unless such signs have first been approved by the Department of Transportation.
- (20) The Department of Transportation is hereby authorized to maintain and keep in repair a suitable way of ingress and egress to all public or church cemeteries or burial grounds in the State notwithstanding the fact that said road is not a part of the state-maintained system of roads. For the purpose of this subdivision a public or church cemetery or burial ground shall be defined as a cemetery or burial ground in which there are buried or permitted to be buried deceased persons of the community in which said cemetery or burial ground is located, but shall not mean a privately owned cemetery operated for profit or family burial plots.
- (21) The Department of Transportation is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. In cases where there is evidence of ownership upon the body of any dead dog, the Department of Transportation shall take reasonable steps to notify the owner thereof by mail or other means.
- (22) No airport or aircraft landing area shall be constructed or altered where such construction or alteration when undertaken or completed may reasonably affect motor vehicle operation and safety on adjoining public roads except in accordance with a written permit from the Department of Transportation or its duly authorized officers. The Department of Transportation is authorized and empowered to regulate airport and aircraft landing area construction and alteration in order to preserve safe clearances between highways and airways and the Department of Transportation is authorized and empowered to make rules, regula-

tions, and ordinances for the preservation of safe clearances between highways and airways. The Department of Transportation shall be responsible for determining safe clearances and shall fix standards for said determination which shall not exceed the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal Aid Highway Act of 1958. Any person, firm, corporation or airport authority constructing or altering an airport or aircraft landing area without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or violating the provisions of the rules, regulations or ordinances promulgated under the authority of this section shall be guilty of a Class 1 misdemeanor; provided, that this subdivision shall not apply to publicly owned and operated airports and aircraft landing areas receiving federal funds and subject to regulation by the Federal Aviation Authority.

- (23) When in the opinion of the Department of Transportation an economy in the expenditure of public funds can be effected thereby, the Department of Transportation shall have authority to enter into agreements with adjoining states regarding the planning, location, engineering, right-of-way acquisition and construction of roads and bridges connecting the North Carolina State highway system with public roads in adjoining states, and the Department of Transportation shall have authority to do planning, surveying, locating, engineering, right-of-way acquisition and construction on short segments of roads and bridges in adjoining states with the cost of said work to be reimbursed by the adjoining state, and may also enter into agreements with adjoining states providing for the performance of and reimbursement to the adjoining state of the cost of such work done within the State of North Carolina by the adjoining state: Provided, that the Department of Transportation shall retain the right to approve any contract for work to be done in this State by an adjoining state for which the adjoining state is to be reimbursed.
- (24) The Department of Transportation is further authorized to pave driveways leading from state-maintained roads to rural fire district firehouses which are approved by the North Carolina Fire Insurance Rating Bureau and to facilities of rescue squads furnishing ambulance services which are approved by the North Carolina State Association of Rescue Squads, Inc.
- (25) The Department of Transportation is hereby authorized and directed to design, construct, repair, and maintain paved streets and roads upon the campus of each of the State's institutions of higher education, at state-owned hospitals for the treatment of tuberculosis, state-owned orthopedic hospitals, juvenile correction centers, mental health hospitals and retarded centers, schools for the deaf, and schools for the blind, when such construction, maintenance, or repairs have been authorized by the General Assembly in the appropriations bills enacted by the General Assembly. Cost for such construction, maintenance, and repairs shall be borne by the Highway Fund. Upon the

General Assembly authorizing the construction, repair, or maintenance of a paved road or drive upon any of the above-mentioned institutions, the Department of Transportation shall give such project priority to insure that it shall be accomplished as soon as feasible, at the minimum cost to the State, and in any event during the biennium for which the authorization shall have been given by the General Assembly.

- (26) The Department of Transportation, at the request of a representative from a board of county commissioners, is hereby authorized to acquire by condemnation new or additional right-of-way to construct, pave or otherwise improve a designated State-maintained secondary road upon presentation by said board to the Department of Transportation of a duly verified copy of the minutes of its meeting showing approval of such request by a majority of its members and by the further presentation of a petition requesting such improvement executed by the abutting owners whose frontage on said secondary road shall equal or exceed seventy-five percent (75%) of the linear front footage along the secondary road sought to be improved. This subdivision shall not be construed to limit the authority of the Department of Transportation to exercise the power of eminent domain.
- (27) The Department of Transportation is authorized to establish policies and promulgate rules providing for voluntary property owner or highway user participation in the costs of maintenance or improvement of roads which would not otherwise be necessary or would not otherwise be performed by the Department of Transportation and which will result in a benefit to the property owner or highway user. By way of illustration and not as a limitation, such costs include those incurred in connection with drainage improvements or maintenance, driveway connections, dust control on unpaved roads, surfacing or paving of roads and the acquisition of rights-of-way. Property owner and highway user participation can be in the form of materials, money, or land (for right-of-way) as deemed appropriate by the Department of Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges.
- (28) The Department of Transportation may obtain land, either by gift, lease or purchase which shall be used for the construction and maintenance of ridesharing parking lots. The Department may design, construct, repair, and maintain ridesharing parking facilities.
- (29) The Department of Transportation may establish policies and adopt rules about the size, location, direction of traffic flow, and the construction of driveway connections into any street or highway which is a part of the State Highway System. The Department of Transportation may require the construction and public dedication of acceleration and deceleration lanes, and traffic storage lanes and medians by others for the driveway connections into any United States route, or North Carolina route, and on any secondary road route with an average daily traffic volume of 4,000 vehicles per day or more.

- (30) Consistent with G.S. 130A-309.14(a1), the Department of Transportation shall review and revise its bid procedures and specifications set forth in Chapter 136 of the General Statutes to encourage the purchase or use of reusable, refillable, repairable, more durable, and less toxic supplies and products. The Department of Transportation shall require the purchase or use of such supplies and products in the construction and maintenance of highways and bridges to the extent that the use is practicable and cost-effective. The Department shall prepare an annual report on October 1 of each year to the Environmental Review Commission as required under G.S. 130A-309.14(a1).
- (31) The Department of Transportation is authorized to designate portions of highways as scenic highways, and combinations of portions of highways as scenic byways, for portions of those highways that possess unusual, exceptional, or distinctive scenic, recreational, historical, educational, scientific, geological, natural, wildlife, cultural or ethnic features. The Department shall remove, upon application, from any existing or future scenic highway or scenic byway designation, highway sections that:
- a. Have no scenic value,
 - b. Have been designated or would be so designated solely to preserve system continuity, and
 - c. Are adjacent to property on which is located one or more permanent structures devoted to a commercial or industrial activity and on which a commercial or industrial activity is actually conducted, in an unzoned area or an area zoned commercial or industrial pursuant to a State or local zoning ordinance or regulation, except for commercial activity related to tourism or recreation.

The Department shall adopt rules and regulations setting forth the criteria and procedures for the designation of scenic highways and scenic byways under this subsection.

Those portions of highways designated as scenic by the Department prior to July 1, 1993, are considered to be designated as scenic highways and scenic byways under this subsection but the Department shall remove from this designation portions of those highway sections that meet the criteria set forth in this subsection, if requested.

- (32) The Department of Transportation may perform dredging services, on a cost reimbursement basis, for a unit of local government if the unit cannot obtain the services from a private company at a reasonable cost. A unit of local government is considered to be unable to obtain dredging services at a reasonable cost if it solicits bids for the dredging services in accordance with Article 8 of Chapter 143 of the General Statutes and does not receive a bid, considered by the Department of Transportation Engineering Staff, to be reasonable. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C.S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, c. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s.

11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155; 1965, c. 879, s. 1; 1967, c. 1129; 1969, c. 794, s. 2; 1971, cc. 289, 291, 292, 977; 1973, c. 507, s. 5; 1977, c. 460, ss. 1, 2; c. 464, ss. 7.1, 14, 42; 1981, c. 682, s. 19; 1983, c. 84; c. 102; 1985, c. 718, ss. 1, 6; 1987, c. 311; c. 417, ss. 1, 2; 1989, c. 158; 1989 (Reg. Sess. 1990), c. 962, s. 1; 1993, c. 197, s. 2; c. 488, s. 1; c. 524, s. 4; c. 539, ss. 974-977; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 247, s. 1; c. 507, s. 18.2.)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and

cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability cause.

Effect of Amendments. —

Session Laws 1995, c. 247, s. 1, effective July 1, 1995, added subdivision (32).

Session Laws 1995, c. 507, s. 18, effective July 1, 1995, in subdivision (13) substituted "may" for "is authorized and empowered to" preceding "construct and maintain", and added "and the Western Residence of the Governor in the City of Asheville".

CASE NOTES

I. General Consideration.

II. Power of Eminent Domain.

I. GENERAL CONSIDERATION.

Pedestrian Member of Protected Class. — Plaintiff, as a pedestrian lawfully and properly using a telephone booth, was a member of the Class A regulation prohibiting installation of phone booths in rights-of-way was intended to protect. *Baldwin v. GTE S., Inc.*, 335 N.C. 544, 439 S.E.2d 108 (1994).

Violation of Administrative Regulation Is Negligence Per Se. — When the violation of an administrative regulation enacted for safety purposes is criminal (subsection (10)), that violation is negligence per se in a civil trial unless

otherwise provided. *Baldwin v. GTE S., Inc.*, 335 N.C. 544, 439 S.E.2d 108 (1994).

Cited in *DOT v. Overton*, 111 N.C. App. 857, 433 S.E.2d 471 (1993).

II. POWER OF EMINENT DOMAIN.

The obstruction of view of plaintiff's billboards due to the vegetation and trees planted by Department of Transportation (DOT) as part of the highway beautification project did not amount to a taking of plaintiff's property. *Adams Outdoor Adv. v. North Carolina DOT*, 112 N.C. App. 120, 434 S.E.2d 666 (1993).

§ 136-18.4. Provision and marking of "pull-off" areas.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions."

§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings; federal parkways.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Rights Afforded by Former Version of this Section. — In enacting this section, the legislature has implicitly

waived the Department of Transportation's sovereign immunity to the extent of the rights afforded in the former version of this section. *Ferrell v. DOT*, 334 N.C. 650, 435 S.E.2d 309 (1993).

§ 136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.

(a) Whenever any road or street forming a link in or a part of the State highway system, whether under construction or heretofore or hereafter constructed, shall cross or intersect any railroad at the same level or grade, or by an underpass or overpass, and in the opinion of the Secretary of Transportation such crossing is dangerous to the traveling public, or unreasonably interferes with or impedes traffic on said State highway, the Department of Transportation shall issue notice requiring the person or company operating such railroad to appear before the Secretary of Transportation, at his office in Raleigh, upon a day named, which shall not be less than 10 days or more than 20 days from the date of said notice, and show cause, if any it has, why such railroad company shall not be required to alter such crossing in such way as to remove such dangerous condition and to make such changes and improvements thereat as will safeguard and secure the safety and convenience of the traveling public thereafter. Such notice shall be served on such railroad company as is now provided by law for the service of summons on domestic corporations, and officers serving such notice shall receive the same fees as now provided by law for the service of such summons.

(b) Upon the day named, the Secretary of Transportation shall hear said matter and shall determine whether such crossing is dangerous to public safety, or unreasonably interferes with traffic thereon. If he shall determine that said crossing is, or upon the completion of such highway will be, dangerous to public safety and its elimination or safeguarding is necessary for the proper protection of the traffic on said State highway, the Secretary of Transportation shall thereupon order the construction of an adequate underpass or overpass at said crossing or he may in his discretion order said railroad company to install and maintain gates, alarm signals or other approved safety devices if and when in the opinion of said Secretary of Transportation upon the hearing as aforesaid the public safety and convenience will be secured thereby. And said order shall specify that the cost of construction of such underpass or overpass or the installation of such safety device shall be allocated between the railroad company and the Department of Transportation in the same ratio as the net benefits received by such railroad company

from the project bear to the net benefits accruing to the public using the highway, and in no case shall the net benefit to any railroad company or companies be deemed to be more than ten percent (10%) of the total benefits resulting from the project. The Secretary of Transportation shall be responsible for determining the proportion of the benefits derived by the railroad company from the project, and shall fix standards for the determining of said benefits which shall be consistent with the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal-Aid Highway Act of 1944.

(c) Upon the filing and issuance of the order as hereinbefore provided for requiring the construction of any underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices at any crossing upon the State highway system, it shall be the duty of the railroad company operating the railroad with which said public road or street intersects or crosses to construct such underpass or overpass or to install and maintain such safety device as may be required in said order. The work may be done and material furnished either by the railroad company or the Department of Transportation, as may be agreed upon, and the cost thereof shall be allocated and borne as set out in subsection (b) hereof. If the work is done and material furnished by the railroad company, an itemized statement of the total amount expended therefor shall, at the completion of the work, be furnished the Department of Transportation, and the Department of Transportation shall pay such amount to the railroad company as may be shown on such statement after deducting the amount for which the railroad company is responsible; and if the work is done by the Department of Transportation, an itemized statement of the total amount expended shall be furnished to the railroad company, and the railroad company shall pay to the Department of Transportation such part thereof as the railroad company may be responsible for as herein provided; such payment by the railroad company shall be under such rules and regulations and by such methods as the Department of Transportation may provide.

(d) Within 60 days after the issuance of the order for construction of an underpass or overpass or the installation of other safety devices as herein provided for, the railroad company against which such order is issued shall submit to the Department of Transportation plans for such construction or installation, and within 10 days thereafter said Department of Transportation, through its chairman of the Department of Transportation, shall notify such railroad company of its approval of said plan or of such changes and amendments thereto as to it shall seem advisable. If such plans are not submitted to the Department of Transportation by said railroad company within 60 days as aforesaid, the chairman of the Department of Transportation shall have plans prepared and submit them to the railroad company. The railroad company shall within 10 days notify the chairman of the Department of Transportation of its approval of the said plans or shall have the right within such 10 days to suggest such changes and amendments in the plans so submitted by the chairman of the Department of Transportation as to it shall seem advisable. The plans so prepared and finally approved by the chairman of the Department of Transportation shall have the same force and effect, and said railroad company shall be charged with like liability, and said underpass or overpass

shall be constructed or such safety device installed in accordance therewith, as if said plans had been originally prepared and submitted by said railroad company. If said railroad company shall fail or neglect to begin or complete the construction of said underpass or overpass, or the installation of such safety device, as required by the order of the Secretary of Transportation, said Secretary of Transportation is authorized and directed to prepare the necessary plans therefor, which plans shall have the same force and effect, and shall fix said railroad company with like liability, as if said plans had been originally prepared and submitted by said railroad company, and the Department of Transportation shall proceed to construct said underpass or overpass or install such safety device in accordance therewith. An accurate account of the cost of said construction or installation shall be kept by the Department of Transportation and upon the completion of such work a statement of that portion thereof chargeable to such railroad company as set out in the order of the Department of Transportation shall be rendered said railroad company. Upon the failure or refusal of said company to pay the bill so rendered, the Department of Transportation shall recover the amount thereof by suit therefor against said company in the Superior Court of Wake County: Provided, that the payment by such railroad company of said proportionate part may be made under such rules and regulations and by such methods as the Department of Transportation may provide. If the Department of Transportation shall undertake to do the work, it shall not obstruct or impair the operation of the railroad and shall keep the roadbed and track safe for the operation of trains at every stage of work. If said railroad company shall construct such underpass or overpass or shall install such safety devices in accordance with the order of the Secretary of Transportation, the proportionate share of the cost thereof as set out in subsection (b) hereof shall upon the completion of said work be paid to the railroad company by the Department of Transportation. The Department of Transportation may inspect and check the expenditures for such construction or installation so made by the railroad company and an accurate account of the cost thereof shall upon the completion of said work be submitted to the Department of Transportation by the railroad company. If the Department of Transportation shall neglect or refuse to pay that portion of the cost of said construction or installation chargeable to it, the railroad company shall recover the amount thereof by suit therefor against the Department of Transportation in the Superior Court of Wake County.

(e) If any railroad company so ordered by the Secretary of Transportation to construct an underpass or overpass or to install safety devices at grade crossings as hereinbefore provided for shall fail or refuse to comply with the order of the Secretary of Transportation requiring such construction or installation, said railroad company shall be guilty of a Class 3 misdemeanor and shall only be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) in the discretion of the court for each day such failure or refusal shall continue, each said day to constitute a separate offense.

(f) The jurisdiction over and control of said grade crossings and safety devices upon the State highway system herein given the Department of Transportation shall be exclusive.

(g) From any order or decision so made by the Secretary of Transportation the railroad company may appeal to the superior

court of the county wherein is located the crossing affected by said order. Such appeal shall not defer or delay the construction of such underpass or overpass or the installation of such safety device as required by the order of the Secretary of Transportation, but the railroad company shall proceed to comply with such order in accordance with his terms. The action of the railroad company in complying with and carrying out such order pending said appeal shall not prejudice or affect the right or remedies of such railroad company on such appeal. Upon such appeal the court shall determine only whether the order of the Secretary of Transportation for such construction or installation is unreasonable and unnecessary for the protection of the traveling public and the apportionment of the cost to the extent hereinafter provided in this subsection, and if upon the hearing of said appeal it shall be determined that said order was unnecessary for the protection of the traveling public, the Department of Transportation shall bear the total cost of the construction of such underpass or overpass or the installation of such safety device. In the event the decision on appeal should be that the construction or installation was necessary but the cost or apportionment thereof unreasonable, then the railroad company shall bear its proportion as provided in this section of such cost as may be determined on appeal to have been reasonable to meet the necessity of the case. Upon said appeal from an order of the Secretary of Transportation, the burden of proof shall be upon the railroad company, and if it shall not be found and determined upon said appeal that said order was unreasonable or unnecessary for the protection of the traveling public at said crossing, then such railroad company shall bear its proportion of the cost of such construction or installation in accordance with this section.

(h) The Department of Transportation shall pay the cost of maintenance of all overpasses and the railroad company shall pay the cost of maintenance of all underpasses constructed in accordance with this section. The cost of maintenance of safety devices at all intersections of any railroad company and any street or road forming a link in or a part of the State highway system which have been constructed prior to July 1, 1959, or which shall be constructed thereafter shall be borne fifty percent (50%) by the railroad company and fifty percent (50%) by the Department of Transportation. The maintenance of said overpasses and underpasses shall be performed by the railroad company or the Department of Transportation as may be agreed upon and reimbursement for the cost thereof, in accordance with this section, shall be made annually. The maintenance of such safety devices shall be performed by the railroad company and reimbursement for the cost thereof, in accordance with this section, shall be made annually by the Department of Transportation. (1921, c. 2, s. 19; 1923, c. 160, s. 5; C.S., s. 3846(y); 1925, c. 277; 1929, c. 74; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1959, c. 1216; 1973, c. 507, s. 5; 1977, c. 464, ss. 7.1, 11, 15; 1993, c. 539, s. 979; 1994, Ex. Sess., c. 14, s. 60; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for

offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for of-

fenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1994 Extra Session amendment

by c. 14, s. 60, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, inserted "dollars" preceding "\$50.00" in subsection (e).

§ 136-26. Closing of State highways during construction; injury to barriers, warning signs, etc.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-27.1. Relocation of water and sewer lines of municipalities and nonprofit water or sewer corporations or associations.

The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines, located within the existing State highway right-of-way, that are necessary to be relocated for a State highway improvement project and that are owned by: (i) a municipality with a population of 5,500 or less according to the latest decennial census; (ii) a nonprofit water or sewer association or corporation; (iii) any water or sewer system organized pursuant to Chapter 162A of the General Statutes; (iv) a rural water system operated by county as an enterprise system; (v) any sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes; or (vi) constructed by a water or sewer system organized pursuant to Chapter 162A of the General Statutes and then sold or transferred to a municipality with a population of greater than 5,500 according to the latest decennial census. (1983 (Reg. Sess., 1984), c. 1090; 1985, c. 479, s. 186(a); 1985 (Reg. Sess., 1986), c. 1018, s. 11; 1993 (Reg. Sess., 1994), c. 736, s. 1; 1995, c. 33, s. 1; c. 266, s. 1.1.)

Editor's Note. —

Session Laws 1993, c. 561, s. 64 of which is noted under this section, in s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 12, 1994, added "or (iv) a rural

water system operated by county as an enterprise system" and made related changes.

Session Laws 1995, c. 33, s. 1, effective April 13, 1995, added "or (v) any sanitary district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes" to the end of the section.

Session Laws 1995, c. 266, s. 1, effective June 15, 1995, and not affecting pending litigation, added the language beginning "or (vi) constructed by a water or sewer system" to the end of the section, and made a related stylistic change.

OPINIONS OF ATTORNEY GENERAL

Qualification for Exemption. — On the date the Department of Transportation lets a contract for a highway improvement project, a water or sewer system organized pursuant to Chapter 162A must be in existence to qualify for an exemption from the requirement that water and sewer lines on state highway right of way be relocated at local expense. See opinion of Attorney General to Mr. William S. Richardson, — N.C.A.G. — (June 21, 1994).

The existence of a right of way encroachment agreement did not affect the application of the exemption as the specific exemption contained in this section supersedes any conflicting provision of the agreement and would not be enforceable. See opinion of Attorney General to Mr. William S. Richardson, — N.C.A.G. — (June 21, 1994).

§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.

(a) All contracts over five hundred thousand dollars (\$500,000) that the Department of Transportation may let for construction or repair necessary to carry out the provisions of this Chapter shall be let to a responsible bidder after public advertising under rules and regulations to be made and published by the Department of Transportation. The right to reject any and all bids shall be reserved to the Board of Transportation. Contracts for construction or repair for federal-aid projects entered into pursuant to this section shall not contain the standardized contract clauses prescribed by 23 U.S.C. § 112(e) and 23 C.F.R. § 635.131(a) for differing site conditions, suspensions of work ordered by the engineer or significant changes in the character of the work. The Department of Transportation shall use only the contract provisions provided in the North Carolina Department of Transportation, Standard Specifications for Roads and Structures, January 1, 1984, except as each may be changed or provided for by rule adopted by the Board of Transportation in accordance with the Administrative Procedure Act.

(b) In those cases in which the amount of work to be let to contract for highway construction, maintenance, or repair is five hundred thousand dollars (\$500,000) or less, at least three informal bids shall be solicited. The term "informal bids" is defined as bids in writing, received pursuant to a written request, without public advertising. All such contracts shall be awarded to the lowest responsible bidder. The Secretary of Transportation shall keep a record of all bids submitted, which record shall be subject to public inspection at any time after the bids are opened.

(c) The construction, maintenance, and repair of ferryboats and all other marine floating equipment and the construction and repair of all types of docks by the Department of Transportation shall be deemed highway construction, maintenance, or repair for the purpose of G.S. 136-28.1 and Chapter 44A and Article 1 of Chapter 143, "The Executive Budget Act." In cases of a written determination by the Secretary of Transportation that the requirement for compatibility does not make public advertising feasible for the repair of ferryboats, the public advertising as well as the soliciting of informal bids may be waived.

(d) The construction, maintenance, and repair of the highway rest area buildings and facilities, weight stations and the Department of Transportation's participation in the construction of welcome center buildings shall be deemed highway construction, main-

tenance, or repair for the purpose of G.S. 136-28.1 and 136-28.3 and Article 1 of Chapter 143 of the General Statutes, "The Executive Budget Act."

(e) The Department of Transportation may enter into contracts for construction, maintenance, or repair without complying with the bidding requirements of this section upon a determination of the Secretary of Transportation or the State Highway Administrator that an emergency exists and that it is not feasible or not in the public interest for the Department of Transportation to comply with the bidding requirements.

(f) The Department of Transportation is required to solicit proposals under rules and regulations published by the Department of Transportation for all contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with highway construction, maintenance, or repair that are over ten thousand dollars (\$10,000). The right to reject any and all proposals is reserved to the Board of Transportation, but the Board of Transportation may consult with the Advisory Budget Commission before awarding any such contract.

(g) The Department of Transportation may enter into contracts for research and development with educational institutions and nonprofit organizations without soliciting bids or proposals.

(h) The Department of Transportation may enter into contracts for applied research and experimental work without soliciting bids or proposals; provided, however, that if the research or work is for the purpose of testing equipment, materials, or supplies, the provisions of Article 3 of Chapter 143 of the General Statutes shall apply. The Department of Transportation is encouraged to solicit proposals when contracts are entered into with private firms when it is in the public interest to do so.

(i) The Department of Transportation may negotiate and enter into contracts with public utility companies for the lease, purchase, installation, and maintenance of generators for electricity for its ferry repair facilities. (1971, c. 972, s. 1; 1973, c. 507, ss. 5, 16; c. 1194, ss. 4, 5; 1977, c. 464, ss. 7.1, 16; 1979, c. 174; 1981, c. 200, ss. 1, 2; c. 859, s. 68; 1985, c. 122, s. 2; 1985 (Reg. Sess., 1986), c. 955, s. 46; c. 1018, s. 2; 1987, c. 400; 1989, c. 78; c. 749, ss. 2, 3; 1995, c. 167, s. 1.)

Editor's Note. —

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 18.14, provides that the Department of Transportation is exempted from the provisions of G.S. 136-28.1, 143-52, 143-53, 143-58, 143-128, and 143-129, to the extent necessary to comply with federal rules, regulations, and policies for the completion of a Congestion Avoidance and Reduction for Autos and Trucks system of traffic management for the greater Charlotte-Mecklenburg urban areas, under sections 6051-6059 of the 1991 Intermodal Surface Transportation Efficiency Act, Pub. L. No. 102-240, 23 U.S.C. § 307.

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective June 5, 1995, substituted "five hundred thousand dollars (\$500,000)" for "three hundred thousand dollars (\$300,000)" in the first sentences of subsections (a) and (b); and inserted "maintenance" following "construction" in subsections (b), (c), (d), (e) and (f).

§ 136-28.6. Private contract participation by the Department of Transportation.

(a) The Department of Transportation may participate in private engineering and construction contracts for State highways.

(b) In order to qualify for State participation, the project must be:

(1) The construction of a street or highway on the Transportation Improvement Plan adopted by the Department of Transportation; or

(2) The construction of a street or highway on a mutually adopted thoroughfare plan that is designated a Department of Transportation responsibility.

(c) Only those projects in which the developer furnishes the right-of-way without cost to the Department of Transportation are eligible.

(d) The Department's participation shall be limited to fifty percent (50%) of the amount of any engineering contract and/or any construction contract let by the developer for the project.

(e) Participation in the contracts shall be limited to cost associated with normal practices of the Department of Transportation.

(f) Plans for the project must meet Department of Transportation standards and shall be approved by the Department of Transportation.

(g) Projects shall be constructed in accordance with the plans and specifications approved by the Department of Transportation.

(h) The Secretary shall report in writing, on a quarterly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between a private developer and the Department of Transportation for participation in private engineering and construction contracts under this section.

(i) Municipalities may participate financially in private engineering and construction contracts for projects pertaining to streets or highways which are on a mutually adopted thoroughfare plan for said municipality. (1987, c. 860, ss. 1, 2; 1989, c. 749, s. 1; 1991, c. 272, s. 1; 1993, c. 183, s. 1; 1995, c. 358, s. 5; c. 437, s. 3; c. 447, ss. 1, 2.)

Editor's Note. — Session Laws 1995, c. 447, s. 1, deleted the provision in Session Laws 1987, c. 860, s. 2, as amended, providing for expiration of this section.

Session Laws 1987, c. 860, s. 2, as amended by Session Laws 1989, c. 749, s. 1, by Session Laws 1991, c. 272, s. 1, by Session Laws 1993, c. 183, s. 1, by Ses-

sion Laws 1995, c. 358, s. 5, and by Session Laws 1995, c. 437, s. 3, made this section effective upon ratification (August 14, 1987), and provided that it would expire July 21, 1995.

Effect of Amendments. — The 1995 amendment, effective June 18, 1995, added subsection (i).

§ 136-28.10. Highway Fund and Highway Trust Fund Small Project Bidding.

Editor's Note. — Session Laws 1993, c. 561, s. 65, effective July 1, 1993, was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for

statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

§ 136-32. Other than official signs prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-32.1. Misleading signs prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-32.2. Placing blinding, deceptive or distracting lights unlawful.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-33. Damaging or removing signs; rewards.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-41.1. Appropriation to municipalities; allocation of funds generally; allocation to Butner.

(a) There is annually appropriated out of the State Highway Fund a sum equal to the net amount after refunds that was produced during the fiscal year by a one and three-fourths cents (1¾¢) tax on each gallon of motor fuel taxed under Article 36C of Chapter 105 of the General Statutes and on the equivalent amount of alternative fuel taxed under Article 36D of that Chapter. The amount appropriated shall be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. In addition, as provided in G.S. 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the cities and towns of this State to be used for the same purposes and distributed in the same manner as the revenue appropriated to them under this section from the Highway Fund. Like the appropriation from the Highway Fund, the appropriation from the High-

way Trust Fund shall be based on revenue collected during the fiscal year preceding the date the distribution is made.

Seventy-five percent (75%) of the funds appropriated for cities and towns shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed. Twenty-five percent (25%) of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which does not form a part of the State highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds under this section and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 of each year. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

The Department of Transportation may withhold each year an amount not to exceed one percent (1%) of the total amount appropriated for distribution under this section for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet. In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under this section submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis.

(b) For purposes of this section and of G.S. 136-41.2 and 136-41.3, urban service districts defined by the governing board of a consolidated city-county in which street services are provided by the

consolidated city-county, as defined by G.S. 160B-2(1), shall be considered eligible municipalities, and the allocations to be made thereby shall be made to the government of the consolidated city-county.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section and of G.S. 136-41.2, the unincorporated area known as Butner qualifies in all respects for allocation of funds under this section and certification of the population and street mileage of Butner by the North Carolina Department of Human Resources is acceptable. Funds allocated to the area for this purpose shall be administered by the member of the State Board of Transportation administering the Highway Fund in Granville County. (1951, c. 260, s. 2; c. 948, ss. 2, 3; 1953, c. 1127; 1957, c. 65, s. 11; 1963, c. 854, ss. 1, 2; 1969, c. 665, ss. 1, 2; 1971, c. 182, ss. 1-3; 1973, c. 476, s. 193; c. 500, s. 1; c. 507, s. 5; c. 537, s. 6; 1975, c. 513; 1977, c. 464, s. 7.1; 1979, 2nd Sess., c. 1137, s. 50; 1981, c. 690, s. 4; c. 859, s. 9.2; c. 1127, s. 54; 1985 (Reg. Sess., 1986), c. 982, s. 1; 1989, c. 692, s. 1.6; 1995, c. 390, s. 26; c. 461, s. 18.)

Editor's Note. — Session Laws 1995, c. 461, s. 20, contains a severability clause.

Effect of Amendments. — Session Laws 1995, c. 390, s. 26, effective January 1, 1996, in subsection (a) divided the former first sentence into the present first and second sentences, in the present first sentence substituted "taxed under Article 36C of Chapter 105 of the Gen-

eral Statutes and on the equivalent amount of alternative fuel taxed under Article 36D of that Chapter" for "as taxed by G.S. 105-434 and 105-435, to", and added "The amount appropriated shall" in the present second sentence.

Session Laws 1995, c. 461, s. 18, effective July 19, 1995, added "as defined by G.S. 160B-2(1)" in subsection (b).

§ 136-41.3. Use of funds; records and annual statement; excess accumulation of funds; contracts for maintenance, etc., of streets.

The funds allocated to cities and towns under the provisions of G.S. 136-41.2 shall be expended by said cities and towns only for the purpose of maintaining, repairing, constructing, reconstructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes, or for the planning, construction and maintenance of bikeways located within the rights-of-way of public streets and highways, or for the planning, construction, and maintenance of sidewalks along public streets and highways.

Each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of G.S. 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2

shall file a statement under oath with the Secretary of Transportation showing in detail the expenditure of funds received by virtue of G.S. 136-41.1 and 136-41.2 during the preceding year and the balance on hand.

No funds allocated to municipalities pursuant to G.S. 136-41.1 and 136-41.2 shall be permitted to accumulate for a period greater than permitted by this section. Interest on accumulated funds shall be used only for the purposes permitted by the provisions of G.S. 136-41.3. Any municipality having accumulated an amount greater than the sum of the past 10 allocations made, shall have an amount equal to such excess deducted from the next allocation after receipt of the report required by this section. Such deductions shall be carried over and added to the amount to be allocated to municipalities for the following year.

In the discretion of the local governing body of each municipality receiving funds by virtue of G.S. 136-41.1 and 136-41.2 it may contract with the Department of Transportation to do the work of maintenance, repair, construction, reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The Department of Transportation within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the Department of Transportation in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system.

In the case of each eligible municipality, as defined in G.S. 136-41.2, having a population of less than 5,000, the Department of Transportation shall upon the request of such municipality made by official action of its governing body, on or prior to June 1, 1953, or June 1 in any year thereafter, for the fiscal year beginning July 1, 1953, and for the years thereafter do such street construction, maintenance, or improvement on nonsystem streets as the municipality may request within the limits of the current or accrued payments made to the municipality under the provisions of G.S. 136-41.1.

In computing the costs, the Department of Transportation may use the same rates for equipment, rental, labor, materials, supervision, engineering and other items, which the Department of Transportation uses in making charges to one of its own department or against its own department, or the Department of Transportation may employ a contractor to do the work, in which case the charges will be the contract cost plus engineering and inspection. The municipality is to specify the location, extent, and type of the work to be done, and shall provide the necessary rights-of-way, authorization for the removal of such items as poles, trees, water and sewer lines as may be necessary, holding the Department of Transportation free from any claim by virtue of such items of cost and from such damage or claims as may arise therefrom except from negligence on the part of the Department of Transportation, its agents, or employees.

If a municipality elects to bring itself under the provisions of the two preceding paragraphs, it shall enter into a two-year contract with the Department of Transportation and if it desires to dissolve the contract at the end of any two-year period it shall notify the Department of Transportation of its desire to terminate said contract on or before April 1 of the year in which such contract shall expire; otherwise, said contract shall continue for an additional two-year period, and if the municipality elects to bring itself under the provisions of the two preceding paragraphs and thereafter fails to pay its account to the Department of Transportation for the fiscal year ending June 30, by August 1 following the fiscal year, then the Department of Transportation shall apply the said municipality's allocation under G.S. 136-41.1 to this account until said account is paid and the Department of Transportation shall not be obligated to do any further work provided for in the two preceding paragraphs until such account is paid.

Section 143-129 of the General Statutes relating to the procedure for letting of public contracts shall not be applicable to contracts undertaken by any municipality with the Department of Transportation in accordance with the provisions of the three preceding paragraphs.

The Department of Transportation is authorized to apply a municipality's share of funds allocated to a municipality under the provisions of G.S. 136-41.1 to any of the following accounts of the municipality with the said Department of Transportation, which the municipality fails to pay:

- (1) Cost sharing agreements for right-of-way entered into pursuant to G.S. 136-66.3, but not to exceed ten percent (10%) of any one year's allocation until the debt is repaid,
- (2) The cost of relocating municipally owned waterlines and other municipally owned utilities on a State highway project which is the responsibility of the municipality,
- (3) For any other work performed for the municipality by the Department of Transportation or its contractor by agreement between the Department of Transportation and the municipality, and
- (4) For any other work performed that was made necessary by the construction, reconstruction or paving of a highway on the State highway system for which the municipality is legally responsible. (1951, c. 260, s. 3; c. 948, s. 4; 1953, c. 1044; 1957, c. 65, s. 11; 1969, c. 665, ss. 3, 4; 1971, c. 182, s. 4; 1973, c. 193; c. 507, s. 5; 1977, c. 464, ss. 7.1, 20; c. 808; 1993 (Reg. Sess., 1994), c. 690, s. 1.1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 6, 1994, added "or for the planning,

construction, and maintenance of sidewalks along public streets and highways" at the end of the first paragraph.

ARTICLE 2A.

*State Roads Generally.***§ 136-44.2A. Secondary road construction.****Editor's Note. —**

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.4 provides: "Five hundred thousand dollars (\$500,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1994-95 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State-maintained county roads in the 17 counties where signing has not already been funded."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

§ 136-44.5. Secondary roads; mileage study; allocation of funds.**Editor's Note. —**

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.4 provides: "Five hundred thousand dollars (\$500,000) of the funds to be allocated pursuant to G.S. 136-44.2A for secondary road construction during the 1994-95 fiscal year shall be exempt from the county formula allocation in G.S. 136-44.5. The Department of Transportation shall utilize the funds so excluded for the signing of State-maintained county roads in the 17 counties where signing has not already been funded."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 324, s. 18.12, as amended by Session Laws 1995, c. 507, s. 18.5, provides: "Of the funds appropriated in this act to the Department of Transportation:

"(1) Fourteen million dollars (\$14,000,000) shall be allocated in each

fiscal year for small urban construction projects. These funds shall be allocated equally in each fiscal year of the biennium among the 14 Highway Divisions for the small urban construction program for small urban construction projects that are located within the area covered by a one-mile radius of the municipal corporate limits.

"(2) Nine million dollars (\$9,000,000) shall be used statewide for rural or small urban highway improvements, industrial access roads, and spot-safety projects as approved by the Secretary of the Department of Transportation."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the

1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

ARTICLE 3.

State Highway System.

Part 1. Highway System.

§ 136-45. General purpose of law; control, repair and maintenance of highways.

CASE NOTES

Liability for Defects in Highway. —

Where the portions of roads in question were part of the state highway system, and as such, the responsibility of the N.C. Department of Transportation (NCDOT), apart from its contract with

the NCDOT, city had no responsibility for the maintenance or condition of the traffic signal in question. *Colombo v. Dorrity*, 115 N.C. App. 81, 443 S.E.2d 752, cert. denied, 337 N.C. 689, 448 S.E.2d 517 (1994).

ARTICLE 3A.

Streets and Highways in and around Municipalities.

§ 136-66.1. Responsibility for streets inside municipalities.

Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

- (1) **The State Highway System. —** The State highway system inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The Department of Transportation shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a statewide coordinated system of primary and secondary streets and highways.
- (2) **The Municipal Street System. —** In each municipality the municipal street system shall consist of those streets and highways accepted by the municipality which are not a part of the State highway system. The municipality shall be responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for this system.
- (3) **Maintenance of State Highway System by Municipalities. —** Any city or town, by written contract with the Department of Transportation, may undertake to maintain, repair,

improve, construct, reconstruct or widen those streets within municipal limits which form a part of the State highway system, and may also, by written contract with the Department of Transportation, undertake to install, repair and maintain highway signs and markings, electric traffic signals and other traffic-control devices on such streets. All work to be performed by the city or town under such contract or contracts shall be in accordance with Department of Transportation standards, and the consideration to be paid by the Department of Transportation to the city or town for such work, whether in money or in services, shall be adequate to reimburse the city or town for all costs and expenses, direct or indirect, incurred by it in the performance of such work.

- (4) If the governing body of any municipality determines that it is in the best interest of its citizens to do so, it may expend its funds for the purpose of making any of the following improvements on streets that are within its corporate limits and form a part of the State highway system:
 - a. Construction of curbing and guttering.
 - b. Adding of lanes for automobile parking.
 - c. Constructing street drainage facilities which may by reasonable engineering estimates be attributable to that amount of surface water collected upon and flowing from municipal streets which do not form a part of the State highway system.
 - d. Constructing sidewalks.
 - e. Intersection improvements, if the governing body determines that such improvements will decrease traffic congestion, improve safety conditions, and improve air quality.

In exercising the authority granted herein, the municipality may, with the consent of the Department of Transportation, perform the work itself, or it may enter into a contract with the Department of Transportation to perform such work. Any work authorized by this subdivision shall be financed entirely by the municipality and be approved by the Department of Transportation.

The cost of any work financed by a municipality under this subdivision may be assessed against the properties abutting the street or highway upon which such work was performed in accordance with the procedures of either Article 10 of Chapter 160A of the General Statutes or any charter provisions or local acts applicable to the particular municipality. (1959, c. 687, s. 1; 1969, cc. 798, 978; 1973, c. 507, s. 5; 1975, c. 664, s. 3; 1977, c. 464, s. 7.1; 1987, c. 747, s. 2; 1993 (Reg. Sess., 1994), c. 690, s. 1; 1995, c. 163, s. 14.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 6, 1994, substituted “sidewalks.” for “sidewalks; provided, that no part of the funds allocated to the municipality by G.S. 136-41.1 may be expended for sidewalk purposes” in subdivision (4)d.

The 1995 amendment, effective June 5, 1995, in subdivision (4), in the intro-

ductory language, substituted “determines” for “shall determine”, inserted “any of” following “making”, inserted “that are” following “streets”, and substituted “and” for “which”; in the last paragraph in subdivision (4)e. substituted “under” for “pursuant to”; and made stylistic changes.

CASE NOTES

City Had No Responsibility for Maintenance or Condition of Traffic Signal. — Where the portions of roads in question were part of the state highway system, and as such, the responsibility of the N.C. Department of Transportation (NCDOT), apart from its contract with

the NCDOT, city had no responsibility for the maintenance or condition of the traffic signal in question. *Colombo v. Dorrity*, 115 N.C. App. 81, 443 S.E.2d 752, cert. denied, 337 N.C. 689, 448 S.E.2d 517 (1994).

§ 136-66.2. Development of a coordinated street system.

Local Modification. — Session Laws 1995, c. 34, s. 4 repealed Session Laws 1965, c. 987, which was shown as a local

modification under this section in the main volume.

ARTICLE 3B.

Dedication of Right-of-Way with Density or Development Rights Transfer.

§ 136-66.10. Dedication of right-of-way under local ordinances.

CASE NOTES

Quoted in *Dellinger v. City of Charlotte*, 114 N.C. App. 146, 441 S.E.2d 626 (1994).

ARTICLE 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-68. (See editor's note) Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.

The establishment, alteration, or discontinuance of any cartway, church road, mill road, or like easement, for the benefit of any person, firm, association, or corporation, over the lands of another, shall be determined by a special proceeding instituted before the clerk of the superior court in the county where the property affected is situated. Such special proceeding shall be commenced by a petition filed with said clerk and the service of a copy thereof on the person or persons whose property will be affected thereby. From any final order or judgment in said special proceeding, any interested party may appeal to the superior court for a jury trial de novo on all issues including the right to relief, the location of a cartway, tramway or railway, and the assessment of damages. The procedure established under Chapter 40A, entitled "Eminent Domain," shall be followed in the conduct of such special proceeding insofar as the

same is applicable and in harmony with the provisions of this section. (1879, c. 82, s. 9; Code, s. 2023; Rev., s. 2683; C.S., s. 3835; 1931, c. 448; 1995, c. 513, s. 1.)

Editor's Note. — Session Laws 1995, c. 513, s. 4 provides: "This act is effective upon ratification but sections 2 and 3 expire on July 1, 1997. This act applies to actions to establish cartways filed on or after the effective date, but before July 1, 1997." For the amendment by s. 1, see the Effect of Amendments note.

Effect of Amendments. — The 1995 amendment by Session Laws 1995, c. 513, s. 1, effective July 29, 1995, and applicable to actions to establish

cartways filed on or after that date, but before July 1, 1997, divided the former last sentence into the present last and next to last sentences, substituted "a jury trial de novo on all issues including the right to relief, the location of a cartway, tramway or railway, and the assessment of damages" for "trial de novo and" in the present next to last sentence, and substituted "Chapter 40A" for "Chapter 40" in the last sentence. See editor's note.

§ 136-69. Cartways, tramways, etc., laid out; procedure.

(a) **(Effective until July 1, 1997)** In order to ensure that all landowners who do not have a deeded or documented easement or right-of-way to a public road shall have a legal means of obtaining access to that road, if any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or the use of land as a single-family homestead, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road, reasonable deeded or documented easement or right-of-way to a public road, or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in G.S. 136-68. Should it be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not more than 18 feet of travel surface or such other minimum width requested in the petition and found necessary and proper by the court, and not more than 30 feet in width for cuts, fills, and ditches or cableways, chutes, and flumes. If a cartway is granted for the use of one or more single-family homesteads, each single-family homestead must consist of at least seven acres of land. Where there exists a private railroad crossing, that private railroad crossing may be used as part of a cartway established under this Article provided the person, firm, association or corporation seeking the cartway agrees to share proportionately with other landowners authorized to use the crossing the cost of maintaining the private crossing and to protect and hold harmless the railroad against all liability associated with the crossing, provided the railroad is being operated in a lawful manner at or in the vicinity of the crossing. Except as herein provided for the establishment of a cartway over an existing private railroad crossing, no real estate, right-of-way, easement, leasehold, or other interest in land which has been condemned by a railroad, or

§ 136-69(a), (c) are set out twice. See notes.

has been obtained for a railroad's use as a right-of-way, depot, or station house shall be used for the establishment of a cartway or other use under this Article except by agreement with the railroad. Should a petitioner seeking a cartway request a new railroad crossing, the railroad shall negotiate in good faith the location of the new crossing at the requested location or some other mutually agreeable location. The jury of view shall assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

(a) **(Effective July 1, 1997)** If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation, other than a navigable waterway, affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section (G.S. 136-68), and if it shall be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than 18 feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

(b) **(See editor's note)** Compensation to the landowner for the establishment of a cartway over the property of another shall be as provided in Chapter 40A Article 4 of the North Carolina General Statutes.

(c) **(Effective until July 1, 1997)** Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land

§ 136-69(a), (c) are set out twice. See notes.

is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. A permissive use of a right-of-way or easement across the land of another shall not be a bar to the establishment of a cartway under this Article. In determining the path of a cartway, tramway or railway the jury of view shall give priority to the location of previously used easements or cartways.

(c) **(Effective July 1, 1997)** Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. (1798, c. 508, s. 1, P.R.; 1822, c. 1139, s. 1, P.R.; R.C., c. 101, s. 37; 1879, c. 258; Code, s. 2056; 1887, c. 46; 1903, c. 102; Rev., s. 2686; 1909, c. 364, s. 1; 1917, c. 187, s. 1; c. 282, s. 1; C.S., s. 3836; 1921, c. 135; Ex. Sess., 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; 1951, c. 1125, s. 1; 1961, c. 71; 1965, c. 414, s. 1; 1981, c. 826, s. 1; 1995, c. 513, s. 2.)

Subsections (a) and (c) set out twice. — The first versions of subsections (a) and (c) set out above are effective until July 1, 1997. The second versions of subsections (a) and (c) set out above are effective July 1, 1997.

Editor's Note. — Session Laws 1995, c. 513, s.4 provides: "This act is effective upon ratification but sections 2 and 3 expire on July 1, 1997. This act applies to actions to establish cartways filed on or after the effective date, but before July 1, 1997." For the amendment by s. 1, see the Effect of Amendment note.

Session Laws 1995, c. 513, s. 3a was codified as subsection (b) of this section at the direction of the Revisor of Statutes. The subsection (a) and (c) designations were assigned by the Revisor of Statutes.

Effect of Amendments. — The 1995

amendment, effective July 29, 1995, and applicable to actions to establish cartways filed on or after that date, but before July 1, 1997, divided the former first sentence into the present first, second and seventh sentences; in the first sentence added "In order to ensure that all landowners who do not have a deeded or documented easement or right-of-way to a public road shall have a legal means of obtaining access to that road", "or the use of land as a single-family homestead", and "reasonable deeded or documented easement or right-of-way to a public road", and substituted "G.S. 136-68" for "the preceding section (G.S. 136-68)"; in the present second sentence substituted "Should it" for "and if it shall", and "more than 18 feet of travel surface or such other minimum width requested in the petition and found necessary and

proper by the court, and not more than 30 feet in width for cuts, fills, and ditches or cable ways, chutes, and flumes" for "less than 18 feet in width, or cableways, chutes, and flumes, and"; added the third

through sixth sentences; in the seventh sentence added "the jury of view shall"; and added the last two sentences of the last paragraph. For the expiration of this amendment, see the editor's note.

§ 136-70. (Effective until July 1, 1997) Alteration or abandonment of cartways, etc., in same manner.

Cartways or other ways established under this Article or heretofore established, may be altered, changed, or abandoned in like manner as herein provided for their establishment upon petition instituted by any interested party. A cartway established under this Article shall not terminate until the time specified in the petition and as found necessary and proper by the court. (1798, c. 508, ss. 1, 2, 3, P.R.; 1834, c. 16, s. 1; R.C., c. 101, s. 38; Code, s. 2057; 1887, c. 46, s. 2; c. 266; Rev., s. 2694; C.S., s. 3837; 1931, c. 448; 1995, c. 513, s. 3.)

For this section as in effect July 1, 1997, see the main pamphlet.

Editor's Note. — Session Laws 1995, c. 513, s. 4, provides that the amendment to this section by s. 3 of c. 513 expires July 1, 1997.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, and

applicable to actions to establish cartways filed on or after that date, but before July 1, 1997, deleted the proviso in the first sentence regarding the termination of ways established for the removal of timber at the end of five years, and added the last sentence.

ARTICLE 5.

Bridges.

§ 136-72. Load limits for bridges; penalty for violations.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-80. Fastening vessels to bridges misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6.

*Ferries, etc., and Toll Bridges.***§ 136-82. Department of Transportation to establish and maintain ferries.**

The Department of Transportation is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as may, in the discretion of the Department of Transportation, be expedient.

To accomplish the purpose of this section said Department of Transportation is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Department of Transportation represent the fair value of the public service rendered.

The Department of Transportation, notwithstanding any other provision of law, may operate, or contract for the operation of, concessions on the ferries and at ferry facilities to provide to passengers on the ferries food, drink, and other refreshments, personal comfort items, and souvenirs publicizing the ferry system. (1927, c. 223; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1989, c. 752, s. 101; 1995, c. 211, s. 1.)

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, in the third paragraph, at the beginning deleted "To provide for the comfort and convenience of the passengers on the ferries established and maintained pur-

suant to this section", inserted "to passengers on the ferries" preceding "food, drink", at the end substituted "and souvenirs publicizing the ferry system" for "for those passengers", and made related changes.

§ 136-82.2. State toll bridges.

(a) Toll. — The Department of Transportation may charge a toll for the use of a bridge that is included in the Highway Trust Fund Intrastate System Projects, which are listed in G.S. 136-179, and is at least three and one-half miles in length. The toll may not exceed ten dollars (\$10.00) for a round trip or five hundred dollars (\$500.00) for an annual pass for a vehicle. The Department may set different rates of fees for passenger motor vehicles and for property-carrying vehicles. The Department may employ personnel to collect the toll and may construct and operate a toll plaza for collection of the toll. Toll revenue that exceeds the cost of collecting the toll shall be credited to the Highway Trust Fund.

(b) Report. — The Department of Transportation shall report annually to the Joint Legislative Transportation Oversight Committee on a toll imposed under this section. The report shall state the amount of toll revenue collected, the number of users paying the toll, the cost of collecting the toll, and any other information requested by the Committee. (1993 (Reg. Sess., 1994), c. 765, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 765, s. 2, made this section effective upon ratification. The act was ratified July 16, 1994.

§ 136-89. Safety measures; guard chains or gates.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.58. Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 6E.

North Carolina Turnpike Authority.

§§ 136-89.78 through 136-89.158: Reserved for future codification purposes.

ARTICLE 6F.

North Carolina Bridge Authority.

§ 136-89.159. Bridge projects.

(a) The creation of the North Carolina Bridge Authority is necessitated by:

- (1) The high cost of constructing long bridges;
- (2) The need for providing better access to areas of a peninsula of the mainland where egress has been blocked by federal acquisition of property; and
- (3) The need for providing additional critically needed evacuation routes from the Outer Banks during hurricanes and in the event of other natural disasters.

(b) The North Carolina Bridge Authority shall construct, maintain, repair, and operate a bridge of more than two miles in length going from the mainland to a peninsula from which land egress is through property of the United States. (1995, c. 485, s. 1.)

Editor's Note. — Session Laws 1995, c. 485, s. 3, made this Article effective upon ratification. The Act was ratified July 26, 1995.

Session Laws 1995, c. 485, s. 2 provides: "The Joint Legislative Transportation Oversight Committee shall study the best method for funding the North

Carolina Bridge Authority and the construction and maintenance of a bridge in Currituck County from the mainland to the Outer Banks near Corolla, and report its findings to the General Assembly on or before the first day of the 1996 Regular Session."

§ 136-89.160. Funding for projects.

All expenses incurred in carrying out the provisions of this Article shall be payable solely from funds, including federal funds, that are now or may become available to the Authority in the future for projects. Any fees collected under this Article shall be credited to the Highway Trust Fund and used to offset the costs of building, maintaining, or operating the bridge and other related projects. (1995, c. 485, s. 1.)

§ 136-89.161. North Carolina Bridge Authority.

(a) There is created a body politic and corporate to be known as the "North Carolina Bridge Authority". The Authority is constituted a public agency, and the exercise by the Authority of the powers conferred by this Article in the construction, operation, and maintenance of the bridge project shall be deemed and held to be the performance of an essential governmental function.

(b) The North Carolina Bridge Authority shall consist of eight members:

(1) The Secretary of Transportation.

(2) Three members shall be appointed by the Governor, one for a term expiring on July 1, 1996, one for a term expiring on July 1, 1997, and one for a term expiring on July 1, 1998. Each subsequent appointment shall be for a term of four years.

(3) Four members shall be appointed by the General Assembly, two upon the recommendation of the President Pro Tempore of the Senate and two upon the recommendation of the Speaker of the House of Representatives, in accordance with G.S. 120-121.

a. The President Pro Tempore of the Senate shall recommend the appointment of two members, one of whom shall serve a term expiring June 30, 1997, and one of whom shall serve a term expiring June 30, 1999. Each subsequent regular appointment shall be for a term of four years.

b. The Speaker of the House shall recommend the appointment of two members, one of whom shall serve a term expiring June 30, 1997, and one of whom shall serve a term expiring June 30, 1999. Each subsequent regular appointment shall be for a term of four years.

(c) The successor of each of the appointed members shall be appointed for a term of four years, but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term, and a member of the Authority shall be eligible for reappointment. Each appointed member of the Authority may be removed by the appointing authority for misfeasance, malfeasance, or willful ne-

glect of duty. Each appointed member of the Authority before entering upon the member's duties shall take an oath to administer the duties of the office faithfully and impartially, and a record of each oath shall be filed in the Office of the Secretary of State.

(d) At its first meeting after July 1, 1995, and every two years thereafter, the Authority shall elect from its appointed membership a chair and a vice-chair. The Authority shall also elect a secretary who need not be a member of the Authority. The secretary shall serve as an officer at the pleasure of the Authority. Five members of the Authority shall constitute a quorum, and the affirmative vote of five members shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

(e) The appointed members of the Authority shall receive no salary for their services but shall be entitled to receive per diem and allowances in accordance with the provisions of G.S. 138-5.

(f) The Authority shall be located within the Department of Transportation for administrative purposes but shall exercise all of its powers independently of the Department of Transportation.

(g) The Authority shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Authority may determine.

(h) Upon completion of any bridge constructed pursuant to this Article, the Authority shall appoint an executive director, whose salary shall be fixed by the Authority, to serve at its pleasure. Prior to appointing an Executive Director, the Authority shall confer with the Governor regarding the proposed salary to be paid to the Executive Director. The Executive Director shall be responsible for the daily administration of bridges constructed, maintained, or operated pursuant to this Article. (1995, c. 485, s. 1.)

§ 136-89.162. Powers of the Authority.

(a) The Authority shall have all of the powers necessary to execute the provisions of this Article which shall include at least the following powers:

- (1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.
- (2) To establish, purchase, construct, operate, and regulate bridges and to own, lease, sell, or manage real or personal property.
- (3) To charge and collect tolls and fees for the use of the bridges, for services rendered in the operation of the bridges, or to offset the costs of building the bridges. A toll shall not exceed ten dollars (\$10.00) and an annual fee for a single vehicle to use the bridge during a year shall not exceed five hundred dollars (\$500.00). The Authority shall report its schedule of tolls and fees to the Joint Legislative Transportation Oversight Committee.
- (4) To rent, lease, purchase, acquire, own, encumber, or dispose of real or personal property.
- (5) To establish, construct, purchase, maintain, equip, and operate any structure or facilities associated with a bridge.

- (6) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.
- (7) To apply for, accept, and administer loans and grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available.
- (8) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Article.
- (9) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Authority and to fix and pay their compensation from funds available to the Authority.
- (10) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Authority and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Authority.
- (11) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.

(b) To execute the powers provided in subsection (a) of this section, the Authority shall determine its policies by majority vote of the members of the Authority present and voting, a quorum having been established. (1995, c. 485, s. 1.)

§ 136-89.163. Taxation of property of Authority.

Property owned by the Authority is exempt from taxation in accordance with Article V, Section 2 of the North Carolina Constitution. (1995, c. 485, s. 1.)

§ 136-89.164. Acquisition, disposition, or exchange of real property.

The Authority may acquire real property by purchase, negotiation, gift, or devise. When the Authority acquires real property owned by the State, the Secretary of the Department of Administration shall execute and deliver to the Authority a deed transferring fee simple title to the property to the Authority. (1995, c. 485, s. 1.)

§ 136-89.165. Cooperation by other State agencies.

All State officers and agencies shall render the services to the Authority within their respective functions as may be requested by the Authority. (1995, c. 485, s. 1.)

§ 136-89.166. Annual and quarterly reports.

The Authority shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor, the General Assembly, and the Department of Transportation. Each report shall be accompanied by an audit of its

books and accounts. The costs of all audits, whether conducted by the State Auditor's staff or contracted with a private auditing firm, shall be paid from funds of the Authority.

The Authority shall submit quarterly reports to the Joint Legislative Transportation Oversight Committee. The reports shall summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Committee. (1995, c. 485, s. 1.)

§ 136-89.167. Dissolution.

Whenever the Authority, by resolution, determines that the purposes for which the Authority was formed have been substantially fulfilled, the Authority may declare itself dissolved. On the effective date of the resolution, the title to all property owned by the Authority at the time of the dissolution shall vest in the State, and possession of the property shall be delivered to the State. (1995, c. 485, s. 1.)

§§ 136-89.168 through 136-89.170: Reserved for future codification purposes.

ARTICLE 7.

Miscellaneous Provisions.

§ 136-90. Obstructing highways and roads misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-91. Placing glass, etc., or injurious obstructions in road.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-92. Obstructing highway drains prohibited.

It is unlawful to obstruct a drain along or leading from any public road in the State. A person who violates this section is responsible for an infraction. (1917, c. 253; C.S., s. 3791; 1993, c. 539, s. 991; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 163, s. 15.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain

applicable to those prosecutions."

Effect of Amendments. —

The 1995 amendment, effective July 1, 1995, and applicable to offenses occurring on or after that date, substituted "prohibited" for "misdemeanor" in the catchline, and rewrote this section.

§ 136-93. Openings, structures, pipes, trees, and issuance of permits.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-94. Gates projecting over rights-of-way forbidden.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-98. Prohibition of local road taxes and bonds and construction of roads by local authorities; existing contracts.

(a) From and after the first day of July, 1931, no county or road district by authority of any public, public-local, or private act shall levy any taxes for the maintenance, improvement, reconstruction, or construction of any of the public roads in the various and several counties of the State, nor shall any county, through the board of commissioners thereof or the highway commission, nor shall any district or township highway commission, issue or sell or enter into any contract to issue or sell any bonds heretofore authorized to be issued and sold, but unissued and unsold, for the purpose of obtaining money with which to improve, maintain, reconstruct, or construct roads, except for the purpose of discharging obligations entered into prior to the ratification of this section, and all acts authorizing the board of county commissioners, the county highway commissions, district highway or township commissions, to issue and sell bonds for the purpose aforesaid, are hereby amended so as to conform to this section. No board of county commissioners nor county highway commission, nor district nor township highway commission from and after the passage of this section shall enter into any contract to build or construct roads in the various and several counties except for such projects as can be completed and paid for prior to July 1, 1931. All contracts heretofore entered into by any county through the board of county commissioners, county highway commission, and all contracts heretofore entered into by any district or township highway commission which shall be incom-

plete on July 1, 1931, shall be taken over by the Department of Transportation and completed by the Department of Transportation by the use of money and funds applicable thereto, by the terms of the said contracts. Nothing in this section or in any section of Chapter 145 of the Public Laws of 1931 that may appear in this Code shall be construed to prohibit the levying of taxes authorized by law for the payment of interest or principal on outstanding bonds or other evidences of debt lawfully issued. Any county or road district which has heretofore issued bonds or other evidences of debt by authority of law for road improvement purposes may refund said bonds or other evidences of debt under and pursuant to the laws of the State of North Carolina relative thereto.

(b) Nothing in this Article prohibits counties from establishing service districts for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes. (1931, c. 145, s. 35; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1977, c. 464, s. 7.1; 1995, c. 434, s. 2.)

Editor's Note. — Part 1, Article 16 of Chapter 153A, referred to in the section above, is codified as 153A-274 et seq.

Effect of Amendments. — The 1995

amendment, effective July 13, 1995, added the subsection (a) designation, and added subsection (b).

§ 136-102. Billboard obstructing view at entrance to school, church or public institution on public highway.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-102.4. Penalty for violation of §§ 136-102.2 and 136-102.3.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after

that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 9.

*Condemnation.***§ 136-103. Institution of action and deposit.**

CASE NOTES

Use of Income Approach to Establish Value. — The decision in *City of Statesville v. Cloaninger*, 415 S.E.2d 111, 106 N.C. App. 10 (1992), appears to use the income approach to establishing property value when there are no com-

parable sales data and the income upon which the opinion of value is based is directly attributable to the land. *DOT v. Fleming*, 112 N.C. App. 580, 436 S.E.2d 407 (1993).

§ 136-108. Determination of issues other than damages.

CASE NOTES

Recording Not Required for Interests in Land Acquired Prior to July 1, 1959. — Section 47-27, which governs deeds for rights-of-way and easements, provides that the Department of Transportation (DOT) does not have to record such interests in land which were acquired prior to July 1, 1959. *DOT v. Wolfe*, 116 N.C. App. 655, 449 S.E.2d 11 (1994).

Section Does Not Infringe Right to Trial by Jury. —

Where a matter was called for hearing pursuant to this section in a condemnation action with no jury, this hearing did not infringe upon the landowner's right to a jury trial as provided by the North Carolina and United States Constitu-

tions. *DOT v. Wolfe*, 116 N.C. App. 655, 449 S.E.2d 11 (1994).

Review on Appeal of Arbitrary and Capricious Conduct. — If condemnation proceedings are subject to review due to allegations of arbitrary and capricious conduct or abuse of discretion, and if the court finds safety to be of legitimate concern, the trial judge must make a finding of fact on that issue. Absent such a ruling, an appellate court cannot properly review the trial court's decision as to whether or not Department of Transportation's actions were arbitrary and capricious. *DOT v. Overton*, 111 N.C. App. 857, 433 S.E.2d 471 (1993), discretionary review improvidently granted, 336 N.C. 598, 444 S.E.2d 448 (1994).

§ 136-109. Appointment of commissioners.

CASE NOTES

Cited in *Ferrell v. DOT*, 334 N.C. 650, 435 S.E.2d 309 (1993).

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.

CASE NOTES

Cited in *Adams Outdoor Adv. v. North Carolina DOT*, 112 N.C. App. 120, 434 S.E.2d 666 (1993).

§ 136-112. Measure of damages.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION. 435 S.E.2d 309 (1993); *Guilford County v. Kane*, 114 N.C. App. 243, 441 S.E.2d 556 (1994).
Cited in *Ferrell v. DOT*, 334 N.C. 650,

ARTICLE 10.

Preservation, etc., of Scenic Beauty of Areas along Highways.

§ 136-125. Regulation of scenic easements.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 11.

Outdoor Advertising Control Act.

§ 136-126. Title of Article.

CASE NOTES

Cited in *Whiteco Indus., Inc. v. Harrelson*, 111 N.C. App. 815, 434 S.E.2d 229 (1993); *Whiteco Indus., Inc. v. Harrington*, 111 N.C. App. 839, 434 S.E.2d 234 (1993).

§ 136-129. Limitations of outdoor advertising devices.

Local Modification. — Buncombe and Surry Counties: 1993 (Reg. Sess., 1994), c. 559, ss. 1, 2.

§ 136-131.1. (Expires June 30, 1998 — See editor's note) Just compensation required for the removal of billboards on federal-aid primary highways by local authorities.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 725, s. 1, amended Session Laws 1981, c. 1147, s. 2, as amended by Session Laws 1983, c. 318, by Session Laws 1987, c. 1024, and by Session Laws 1989, c.

166, s. 1, to change the expiration date of this section from June 30, 1994, to June 30, 1998. This amendment became effective

July 11, 1994, after the June 30, 1994 expiration date.

CASE NOTES

Cited in Capital Outdoor Adv., Inc. v. City of Raleigh, 337 N.C. 150, 446 S.E.2d

289, rehearing denied, 337 N.C. 807, 449 S.E.2d 566 (1994).

§ 136-135. Enforcement provisions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-140.1. Adopt-A-Highway.

(a) Notwithstanding any other provision of this Article, the Department of Transportation may permit individuals or groups participating in its Adopt-A-Highway Program access to controlled access facilities for the purpose of removing litter from the right-of-way. Acknowledgment of participation in the program may be indicated by appropriate signs that shall be owned, controlled, and erected by the Department of Transportation. The size, style, specifications, and content of the signs shall be determined in the sole discretion of the Department of Transportation. The Department of Transportation may issue rules and policies necessary to administer the program.

(b) Adopt-A-Highway participants may use contract services to clean the roadside of the sections of highway the participants have adopted only in accordance with the rules and policies issued by the Department of Transportation. (1995, c. 324, s. 18.1.)

Editor's Note. — Session Laws 1995, c. 324, s. 28.5, made this section effective July 1, 1995.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the

Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

ARTICLE 12.

Junkyard Control Act.

§ 136-144. Restrictions as to location of junkyards.

CASE NOTES

Cited in Naegele Outdoor Adv., Inc. v. Harrelson, 112 N.C. App. 98, 434 S.E.2d 244 (1993).

§ 136-145. Enforcement provisions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring

on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 136-147. Screening of junkyards lawfully in existence.

CASE NOTES

Cited in *Naegle Outdoor Adv., Inc. v. Harrelson*, 112 N.C. App. 98, 434 S.E.2d 244 (1993).

ARTICLE 14.

North Carolina Highway Trust Fund.

§ 136-176. (For contingent repeal see note) Creation, revenue sources, and purpose of North Carolina Highway Trust Fund.

(a) A special account, designated the North Carolina Highway Trust Fund, is created within the State treasury. The Trust Fund consists of the following revenue:

- (1) Motor fuel, alternative fuel, and road tax revenue deposited in the Fund under G.S. 105-449.125, 105-449.134, and 105-449.43, respectively.
- (2) Motor vehicle use tax deposited in the Fund under G.S. 105-187.9.
- (3) Revenue from the certificate of title fee and other fees payable under G.S. 20-85.
- (4) Revenue available from the retirement of refunding bonds issued to repay highway construction bonds and deposited in the Fund under G.S. 136-183.
- (5) Interest and income earned by the Fund.

(b) Funds in the Trust Fund are annually appropriated to the Department of Transportation to be allocated and used as provided in this subsection. A sum, not to exceed four and one-half percent (4.5%) of the amount of revenue deposited in the Trust Fund under subdivisions (a)(1), (2), and (3) of this section, may be used each fiscal year by the Department for expenses to administer the Trust Fund. The rest of the funds in the Trust Fund shall be allocated and used as follows:

- (1) Sixty-one and ninety-five hundredths percent (61.95%) to plan, design, and construct the projects of the Intrastate System described in G.S. 136-179.
- (2) Twenty-five and five hundredths percent (25.05%) to plan, design, and construct the urban loops described in G.S. 136-180.
- (3) Six and one-half percent (6.5%) to supplement the appropriation to cities for city streets under G.S. 136-181.

(4) Six and one-half percent (6.5%) for secondary road construction as provided in G.S. 136-182.

(c) If funds are received under 23 U.S.C. Chapter 1, Federal-Aid Highways, for a project for which funds in the Trust Fund may be used, the amount of federal funds received plus the amount of any funds from the Highway Fund that were used to match the federal funds may be transferred by the Secretary of Transportation from the Trust Fund to the Highway Fund and used for projects in the Transportation Improvement Program.

(d) A contract may be let for projects funded from the Trust Fund in anticipation of revenues pursuant to the cash-flow provisions of G.S. 143-28.1 only for the biennium following the year in which the contract is let. (1989, c. 692, s. 1.1; c. 770, ss. 68.2, 74.6; 1989 (Reg. Sess., 1990), c. 1024, s. 46(a), (b); 1991, c. 193, s. 9; c. 280, s. 1; c. 689, s. 62; 1995, c. 390, s. 27.)

Editor's Note. — For contingent repeal, see editor's note under § 136-175 in the main pamphlet.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996,

in subdivision (a)(1) substituted "alternative fuel" for "special fuel", and "105-449.125, 105-449.134" for "105-445, 105-449.16".

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1995

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1995 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina



STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

November 1, 1935

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1935 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina